

INTRODUCTION TO CONTRACTING AND THE FEDERAL ACQUISITION PROCESS

INSTRUCTOR GUIDE

**FEDERAL ACQUISITION INSTITUTE
OFFICE OF ACQUISITION POLICY
OCTOBER 1992 (FAC 90-12)**

FOREWARD TO THE THIRD EDITION

(OCTOBER 1992)

This is the third edition of Introduction to Contracting. The Instructors Guide, Classroom Materials, Text/Reference, Tests, and Viewgraphs have all been made current through FAC 90-12.

The following are tables of pages that have been changed in the Text/Reference and Instructor Guide. Corresponding changes have also been made to the Classroom Materials, Tests, and Viewgraphs.

TEXT/REFERENCE	
PAGE	NATURE OF CHANGE
3-9 to 3-10	References 48 CFR, ch. 99 (Cost Accounting Standards); reports that the FIRMR is now incorporated in App. A to FAR Part 39. (FACs 90-5 and 90-12)
6-18 to 6-19	Includes language on voluntary standards and FAR 10.006 exceptions to the use of FED Specs (FAC 90-9)
7-43	Adds the modifier "or the ability to obtain them" to certain responsibility standards.
7-48	Emphasizes that the GAO only recommends award of protest costs (FAC 90-6)
9-10	Refers to Alternative Dispute Resolution procedures (FAC 90-10)

INSTRUCTOR GUIDE	
PAGE	NATURE OF CHANGE
8-15	Updates FAR 52.209-6 (FAC 90-5)
9-12	Updates FAR 52.233-1 (FAC 90-10)

INTRODUCTION

APPROACH TO THE COURSE

Length:	Five days.
Who Should Attend:	Federal entry-level personnel in acquisition-related fields. For Contracting (GS-1102) professionals, this is the first course of a skill-based curriculum provided by the GSA Training Center.
Objectives:	This course is designed to provide knowledge about the Federal acquisition process and the principal duties of Contracting personnel. The following are the specific objectives of each lesson:

Preface

At the end of this lesson the trainee should be able to:

- Identify the basic components of the Federal acquisition process.
- Define significant terms used in Federal contracting.
- List and describe the essential elements of a contract.
- Describe how a contract is discharged.

Lesson 1 — Goals of the Federal Acquisition Process

At the end of this lesson the trainee should be able to:

- Identify and define the goals of the Federal acquisition process.
- Describe four environmental factors that affect the Government's ability to accomplish goals of the acquisition process.

Lesson 2 — Organizational Roles and Responsibilities

At the end of this lesson the trainee should be able to:

- State the role of the legislative branch relative to the acquisition process.
- State the role of the executive branch relative to the acquisition process.
- State the role of the judicial branch relative to the acquisition process.
- State the role of the public and non-Government organizations in the acquisition process.

Lesson 3 — Basic Statutes and Regulations

At the end of this lesson the trainee should be able to:

- Identify and describe the four principal sources of Federal Contract Law.
- Identify the basic statutes that control the fundamentals of purchasing and contracting.
- Describe the Federal Acquisition Regulatory system—its sources, maintenance, supplements, and usage.

Lesson 4 — Acquisition Roles and Responsibilities within an Agency (the Players)

At the end of this lesson the trainee should be able to:

- Describe a typical approach to organizing the acquisition function within a department or agency.
- Define the Law of Agency.
- Identify and define the roles and responsibilities of contracting officers, other contracting personnel, requirements managers, contracting officer representatives, and other interested parties.

Lessons 5 Through 9 — Overview of the Federal Acquisition Process

At the end of this lesson the trainee should be able to identify the principal Contracting functions, steps, and related business questions.

Lesson 10 — Standards of Conduct

At the end of this lesson the trainee should be able to:

- Identify standards of conduct that apply to the acquisition process.
- Recognize prohibited activities
- Identify the penalties for prohibited conduct.

Instructional methods

Although the principal purpose of the course is to convey knowledge, lecture is nonetheless just one of several methods employed. This course also relies on case studies, roleplaying, reading assignments—including in-class reading periods—and interactive viewgraphs.

FORMAT OF THE INSTRUCTOR GUIDE

TOPIC: .c. 7.1.1.5 BONDS

Ref: Pages 7-12 to 7-14

Objective: When you finish Section 7.1.1.5, your students must be able to:

- Define “bond” and describe types of bonds.
- Identify situations in which a bond might be necessary.

Time: 9:40 — 10 Minutes

Method: Lecture/Discussion.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 7-10	<p>a. Define “bond” and lead students through the sample bond (CM 7-10).</p> <p>“A bond is a written instrument executed by an offeror or contractor (the “principal”) and a second party (the “surety”) to assure fulfillment of the principal’s obligations to the Government). If the principal fails to meet a covered obligation, the surety has to cover the Government’s loss to the extent stipulated in the bond.”</p> <p>Bonds protect the Government against such risks as:</p> <ol style="list-style-type: none"> 1. Withdrawal of a bid by the apparent winning bidder 2. Failure to complete the work of the contract. 3. Failure by the contractor to pay subcontractors. <p>b. Describe conditions under which COs require offerors to submit bonds.</p> <p>Bonds are required for construction contracts in the U.S. over \$25,000. For other contracts, bonds are used only when deemed necessary by the CO.</p> <p>c. Question : Should Jones require offerors to submit bonds for the Smoketown upgrades? [Solicit answers from the class before providing your own]</p> <p>Answer: No. The question is whether the risk of default is high enough to make bonds a worthwhile investment. Jones has decided against any bonding requirement because firms in this market have generally had a good track record for honoring their obligations.</p>	Ω

KEY TO THE FORMAT

∂ Each lesson begins with a topic. Most chapters address only one topic. However, note that chapters 6 through 9 are subdivided into many topics, each cross-referenced to the corresponding section of the text/reference.

Σ The Ref (i.e., reference) is to the corresponding chapter or pages from the text/reference.

Π This identifies learning objective(s) related to the topic.

π This identifies the starting time for coverage of the topic (e.g., 9:40 AM) and the amount of time budgeted for the topic (e.g., 10 minutes).

⑤ This is the method for instructing this lesson. Other methods include roleplaying, case studies, interactive viewgraphs, and group exercises.

⑥ This column provides occasional references to pages from the text/reference and from Classroom Materials (for the benefit of the students). Pages from the Classroom Materials always have the prefix CM-. Note that the Classroom Materials have been incorporated in this Instructor Guide—as the instructor, you will therefore only have to work with the Instructor Guide and the Text/Reference.

This column also contains icons (see the following page for a catalog of icons and the definition of each).

⑦ This column presents the teaching points, information to support the teaching points, and transitions.

Ω This column for the most part is blank. Please feel free to add your own personal notes to your copy of the Instructor Guide.

⑨ This is a teaching point. You are responsible for covering all such points.

⑩ This is information to support the teaching point. We have tried to provide all the information necessary for each teaching point, so that you will not have to do additional research to teach this course. However, you should try to convey this information in your own words. More importantly, we strongly encourage you to weave in your own examples and draw on your own experience in presenting the teaching point.

INSTRUCTOR GUIDE

ICONS

The icons used in this instructor guide are shown below:

Show viewgraph

Show interactive viewgraph

Instructor note of special significance



Roleplay

Use chalkboard/flipchart



Group Exercise



Question/Answer Sessions

INTERACTIVE VIEWGRAPHS

Note that one of the icons cited above is to indicate an "interactive viewgraph."

An interactive viewgraph is a slide on the overhead projector that requires a response from the class. For example, if you are showing a decision table, the "then" side would be empty and the students would help you fill out the answers. Or perhaps the slide asks a particular question about a list of conditions shown on the slide.

PREPARING TO TEACH

- To teach this course for the first time, you should plan 40 to 80 hours of preparation. You will **not** need this time to research and build your own detailed lecture notes, case studies, roleplays, or the like. This Instructor Guide is complete with all the instructional materials necessary to deliver the course. Rather, you will need the time to become thoroughly familiar with the Text/Reference and this Instructor Guide.
- Feel free to annotate and otherwise mark up the Instructor Guide.
- Build your own examples for teaching points.
- Draw on any supplementary materials available to you. For example, bring a copy of an RFP for the class to peruse.
- Review the attendance roster prior to class to evaluate the makeup of the group (i.e., organization unit, grade level, etc.). Continue to evaluate for experience and ability level throughout the course. Use this information to form study/work groups as needed.
- Arrange for the necessary training aids:
 - Viewgraphs and overhead projector
 - Viewgraph markers
 - Flipchart and markers
 - Chalk for the chalkboard
- Examine the classroom before the students arrive, preferably no later than the day before. Make certain there is a table upon which you can place all your materials. Make sure the location of your table and/or podium is visible by all students. Make certain there is sufficient room for you to move easily among the several tables to assist individuals as needed.

INSTRUCTOR GUIDE

TIPS ON CONDUCTING THE COURSE

- Time management is critical. Stick to the schedule. Move the class along. If questions are asked on Monday that pertain to topics to be covered on Tuesday, defer answering the questions until Tuesday.
- At the end of each day, remind the students of their reading assignments for the night. As indicated in the text, punctuate lectures with questions that the students should be able to answer from the previous night's reading.
- Lessons 6 through 9 are based on a single, all encompassing case study—the Smokestack Scenario. Stick to that scenario as faithfully as possible. Don't let it get off track. In particular, make sure that you present every “Setting,” every basic business question, and every recap.
- Remember to get the completed course evaluation form from all students.

EVALUATING YOUR PERFORMANCE

The following are among the criteria for evaluating your performance.

- Accomplishment of the learning objectives.
- Coverage of all teaching points, case studies, group exercises, and roleplays.
- Effectiveness in presenting the lectures, group exercises, case studies, roleplays, and discussions.
- Use of all Classroom Materials provided to the students.

TIME	LESSONS
Day One	
8:00 AM (120 mins)	Preface
10:00 AM (20 mins)	Break
10:20 AM (80 mins)	Lesson 1 — Goals of the Federal Acquisition Process
11:30 AM (60 mins)	Lunch
Optional	Lesson 2 — Organizational Roles and Responsibilities (Political Environment)
12:30 PM (60 mins)	Lesson 3 — Basic Statutes and Regulations (Legal Environment)
1:30 PM (60 mins)	Lesson 4 — Acquisition Roles and Responsibilities Within an Agency (Internal Environment)
2:30 PM (20 mins)	Break
2:50 PM (40 mins)	Lesson 5 — Introduction to the Acquisition Process
Day Two	
8:00 AM (All day)	Lesson 6 — Presolicitation Phase (See Lesson 6, page i, for a detailed breakdown of the day).
Day Three	
8:00 AM (All day)	Lesson 7 — Solicitation and Award Phase (See Lesson 7, page i, for a detailed breakdown of the day).

TIME	LESSONS
Day Four	
8:00 AM (210 mins)	Lesson 7 — Solicitation and Award Phase (Con't)
11:30 AM (60 mins)	Lunch
12:30 PM (remainder of the day)	Lesson 8 — Post Award Administration Phase (See Lesson 8, page i, for a detailed breakdown of this lesson).
Day Five	
8:00 AM (105 mins)	Lesson 8 — Post Award Administration Phase (Con't)
9:45 AM (20 mins)	Break
10:05 AM (85 mins)	Lesson 9 — Modifications, Terminations, and Claims
11:30 AM (60 mins)	Lunch
12:30 PM (90 mins)	Lesson 10 — Standards of Conduct
2:00 PM (60 mins)	Exam (Proctor)
3:00 PM	Questions/Answers Administrative

PREFACE

The Federal Acquisition Process

TOPIC: PREFACE

Ref: Preface


Objective: When you finish this lesson, your students must be able to:

- Identify the basic components of the Federal acquisition process.
- Define significant terms used in Federal contracting.
- List and describe the essential elements of a contract.
- Describe how a contract is discharged.

Time: 8:00 AM — 120 Minutes

Method: Lecture/Discussion and Case Study.

COURSE INTRODUCTION

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. As students enter the class, encourage them to read pages CM I-1 through I-7.</p> <p>b. State the title of the course.</p> <p>c. Introduce yourself.</p> <p>d. Introduce the physical environment for the learning.</p> <ul style="list-style-type: none"> • Parking. • Restrooms. • Eating facilities. <p>e. Introduce the instructional package.</p> <ul style="list-style-type: none"> • The Text/Reference. • Classroom Materials. <p>f. Ask the class members to introduce themselves and identify their respective job series, employing agencies, and expectations.</p> <p>g. Ask the students to turn to pages CM I-1 and read "Who Should Attend" and "Purpose".</p>	

FROM CM I-1:

Who Should Attend

All personnel who need an introduction to the Federal acquisition system.

Note that this is not a course in Small Purchases (i.e., acquisitions under Part 13 of the Federal Acquisition Regulation). The GSA Training Center offers several courses in Small Purchases.

For Contract Specialists (or personnel planning to enter the GS-1102 series), this course describes the Federal acquisition system and introduces 78 duties that are typically assigned at the full performance level. The GSA Training Center offers a complete curriculum of Contract Management courses to systematically develop skill at performing those duties (see page I-6).


For personnel in allied fields (e.g., program management, engineering, supply management, inventory management, logistics, and the like), this course provides a "bird's eye" view of Contracting from the perspective of Contracting Officers. You will have a better understanding of their duties and business decisions, in terms of how you can work with Contracting Officers to make the Federal acquisition system more responsive to your missions.

Purpose

The primary purpose of this course is to answer the following questions:

- What is a contract?
- What are the goals of the Federal acquisition system (i.e., the goals that you should strive to accomplish when you contract for supplies and services)?
- Who regulates and oversees the Federal acquisition system?
- What laws and regulations govern the Federal acquisition system?
- Who are the players in awarding and administering contracts, and what are their respective roles and responsibilities?
- What are the Steps and Basic Business Issues in awarding and administering contracts?
- What Standards of Conduct must you observe?

COURSE INTRODUCTION

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>h. Present the basic schedule for the course.</p> <ul style="list-style-type: none">• 8:00-3:30 Monday through Friday.• One hour for lunch.• Two breaks of 20 minutes each, one in the morning and one in the afternoon. <p>i. For more details on schedule, refer students to pages CM I-2 and I-3.</p>	

FROM CM I-2 AND CM I-3: EXCERPTS FROM THE LESSON PLAN

The Federal Acquisition Process

Day	Time	LESSON
Monday	8:00 AM - 10:00 AM <i>Break</i>	Preface
Monday	10:20 AM - 11:30 AM <i>Lunch</i>	1. Goals of the Federal Acquisition Process
<i>Optional</i>		2. Organizational Roles and Responsibilities
Monday	12:30 PM - 1:30 PM	3. Basic Statutes and Regulations
Monday	1:30 PM - 2:30 PM <i>Break</i>	4. Acquisition Roles and Responsibilities Within an Agency
Monday	2:50 PM - 3:30 PM	5. Introduction to the Acquisition Process
Tuesday	8:00 AM - 3:30 PM	6. Presolicitation Phase
Wednesday	8:00 AM- 3:30 PM	7. Solicitation and Award Phase
Thursday	8:00 AM- 11:30 AM <i>Lunch</i>	
Thursday	12:30 PM - 3:30 PM	8. Post Award Administration Phase
Friday	8:00 AM - 9:45 AM <i>Break</i>	
Friday	10:05 AM - 11:30 AM <i>Lunch</i>	9. Modifications, Terminations, and Claims
Friday	12:30 PM - 1:30 PM	10. Standards of Conduct
Friday	1:30 PM	Test


COURSE INTRODUCTION

Ref.	Steps In Presenting The Topic	Instructor Notes
☞	j. Ask the students to turn to page CM I-4. Draw their attention to "Text/Reference Reading Assignments."	

**TEXT/REFERENCE
READING ASSIGNMENTS**

When	Chapters	Sections
Monday Night	Preface	All
	Chapter 1 — pages 1-1 through 1-11	<i>Chapter Introduction</i> through §1.2.8 <i>[Tradeoffs] Between Quality and Cost</i>
	Chapter 3 — pages 3-2 through 3-10	<i>Chapter Introduction</i> through §3.1.4 <i>Common Law</i>
	Chapter 3 — pages 3-14 through 3-26	§3.2.2 <i>Basic Statutes</i> through §3.3.4 <i>Using the FAR System</i>
	Chapter 4 — pages 4-10 through 4-16	§4.2 <i>Key Acquisition Personnel</i>
	Chapter 5	All
	Chapter 6	All
Tuesday Night	Chapter 7	All
Wednesday Night	Chapter 8	All
Thursday Night	Chapter 9	All
	Chapter 10	All

☞ **STRESS THAT READING THE PREFACE AND CHAPTER 1 ARE IMPORTANT FOR THE TEST.**

COURSE INTRODUCTION		
Ref.	Steps In Presenting The Topic	Instructor Notes
	k. Refer the students to page CM I-5. Emphasize: <ul style="list-style-type: none"> • Pace. • Questions. • Test. 	

(Excerpts from CM I-5):

Instructional Methods. In this course, the Text/Reference has been designed to serve as your basic source of knowledge. To draw on this knowledge, you must read the Text/Reference. Your Instructor will not parrot the readings. Rather, your Instructor will use a variety of methods to supplement the readings and illustrate the main points. Methods include individual exercises, group exercises, roleplaying, in-class readings, and questions. On Tuesday through Friday, you will follow the story of a single requirement--upgrades to air pollution equipment in a Government building--from "cradle to grave".

Do not expect that the Instructor's questions during the class will mirror the test questions. The test will question your knowledge of facts from the readings. During the class, your Instructor will typically ask you to express an opinion or your best judgement.


Do not expect all exercises to have a clear-cut School solution. Some case studies have no obvious solution. In such cases, the issue is not "right or wrong." Rather, your goal is to identify the best course of action, given what facts you know at this time.

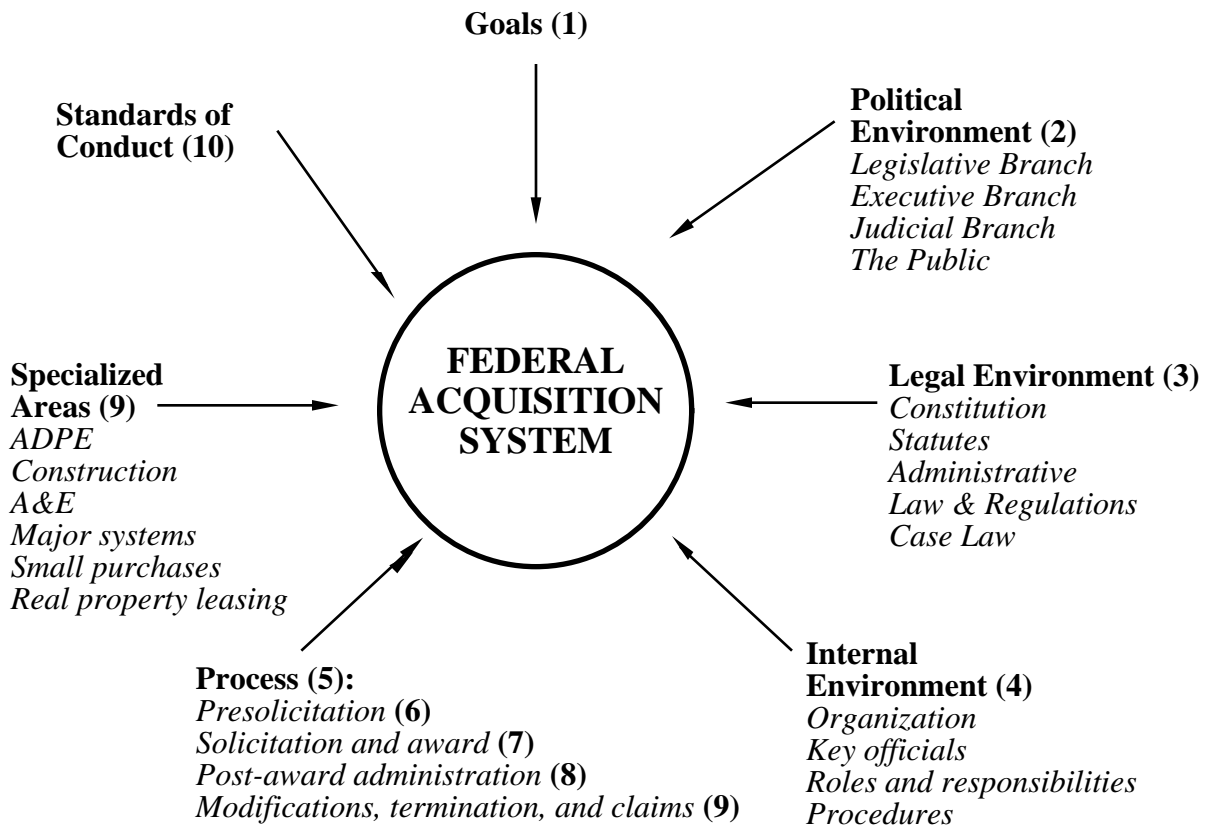
Pace. Expect a **fast** pace. The emphasis in this course is on breadth of knowledge, not depth. Your Instructor has to cover 78 Contracting duties. Your Instructor won't spend much time on any one duty. Likewise, your Instructor will ask you to observe **strict time limits (usually 15 to 20 minutes) to complete each classroom exercise.**

Questions. Because of the fast pace, your Instructor will **sometimes ask you to hold a question for later in the course or for an after-hours dialogue** with you. Time will simply not permit the Instructor to entertain questions before the whole class that are too technically involved.

Test. There is one written test. It contains about **50 [multiple choice] questions** and will be administered on the last day of class. The test should take no more than 70 minutes. All test questions were developed to verify the learning acquired from course lesson learning objectives. The **answers to all test questions are taken from the reading assignments** on the page I-4. Not all answers will be presented by the Instructor in classroom discussions.

COMPONENTS OF THE FEDERAL ACQUISITION PROCESS


Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Show VG P-1: The Federal Acquisition System. The numbers represent the chapters and related lessons in which each component will be discussed.</p> <p>Continue showing this viewgraph while presenting the learning objectives for each related lesson.</p>	




VG P-1

	b. Starting with Goals (1), present the learning objectives of each lesson.	
--	---	--

COMPONENTS OF THE FEDERAL ACQUISITION PROCESS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>Goals (1) At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> • Identify and define the goals of the Federal acquisition process. <p>Note: This lesson is based on Chapter 1 of your text/reference— Goals of the Federal Acquisition Process.</p>	
	<p>Political Environment (2) At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> • State the roles of the legislative, executive, and judicial branches relative to the acquisition process. • State the role of the public and non-Government organizations in the acquisition process. <p>Note: This lesson builds on Chapter 2— Organizational Roles and Responsibilities.</p> <p>Legal Environment (3) At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> • Identify and describe the four principal sources of Federal Contract Law. • Identify the basic statutes that control the fundamentals of purchasing and contracting. • Describe the Federal Acquisition Regulatory system--its sources, maintenance, supplements, and usage. <p>Note: This lesson builds on Chapter 3— Basic Statutes and Regulations.</p>	<p>LESSON 2 IS OPTIONAL</p>


COMPONENTS OF THE FEDERAL ACQUISITION PROCESS		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>Internal Environment (4) At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> • Describe a typical approach to organizing the acquisition function. • Define the Law of Agency. • Identify and define the roles and responsibilities of contracting officers, other contracting personnel, requirements managers, contracting officer representatives, and other interested parties. <p>Note: This lesson builds on Chapter 4 — Acquisition Roles and Responsibilities within an Agency (the Players).</p>	
	<p>Process (5-9) and Specialized Areas (9) At the end of these lessons, you will be able to:</p> <ul style="list-style-type: none"> • State the three phases of the acquisition process. • Identify the functions and business issues associated with each phase. • Describe the relationship between acquisition goals and functions. • List and describe 78 duties of Federal contracting officers. <p>Note: These lessons correspond to Chapters 5 through 9 of your text/reference.</p>	

COMPONENTS OF THE FEDERAL ACQUISITION PROCESS

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>Process (5-9) (continued) In presenting the objectives of these chapters, stress:</p> <ul style="list-style-type: none"> • This course will enable you to identify the duties—what they are and why they are performed. • Other courses in the GSA curriculum teach the steps in performing each duty--the HOW. • This course will not cover such Purchasing functions as ordering from required sources of supply or writing purchase orders. These topics are covered in GSA training courses on Small Purchases. <p>Standards of Conduct (10) At the end of this lesson, you will be able to:</p> <ul style="list-style-type: none"> • Identify standards of conduct that apply to the acquisition process. • Recognize prohibited activities • Identify the penalties for prohibited conduct. <p>Note: This lesson is based on Chapter 10 of your text/reference— Standards of Conduct.</p>	

KEY TERMS		
Ref.	Steps In Presenting The Topic	Instructor Notes
P-3 to P-4	<p>Transition—“Before I can introduce the acquisition process to you, we must first have a common understanding of the meaning of the term “acquisition” and the term “contract.”</p>	
	<p>a. Define “acquisition”</p> <p>FAR 2.1: “Acquisition means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.”</p>	
	<p>b. Define “contract”</p> <p>FAR 2.1: “Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.”</p>	
	<p>c. Point out the other terms that are defined on pages P-3 to P-4.</p>	

ELEMENTS OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Show VG P-2: Elements of a Contract.</p> <p>Continue showing this VG during the case study.</p>	

ELEMENTS OF A CONTRACT

- Offer
- Acceptance
- Consideration
- Execution by Competent Parties
- Legality of Purpose
- Clear Terms and Conditions

VG P-2



P4 to
P6

CM
P2

b. PREFACE CASE STUDY—TODD'S CONTRACT WITH XYG

- Ask students to read the case study (Page CM P2).
- Have the students read Pages P-4 through P-6 of the Preface.
- Ask the students to prepare answers to the following questions after they read the Case Study:
 1. If XYG fails to deliver the 45,000 ferro-plastic fasteners, will it be in breach of contract? Why or why not?
 2. What , if anything, is missing in this document that prevents it from being a contract?

In preparing their answers, tell students to take each element of a contract into account.

PREFACE CASE STUDY (CM P-2)

TODD'S CONTRACT WITH XYG

Jerome Pasintach, President
XYG Ferroplastics
4040 Wyoming Ave
St. Paul, Colorado 77777

Dear Mr. Pasintach,

In your advertisement on page 21 in the June, 1989, issue of Ferroplastics News, you announced your plans to shortly introduce several new models of ferroplastic fasteners. Your advertisement invited interested parties to call for pricing information and availability.

We have a dire need for the very best fasteners that you intend to produce. Therefore, pursuant to your advertisement, please ship 45,000 of your best ferroplastic fasteners to my Indianapolis plant (address enclosed) as soon as they are available. However, the fasteners must not be shipped in cartons, as implied in the enclosure. Instead, please individually package the fasteners in styrofoam.

I understand that your corporation is under court order to cease and desist from selling ferroplastic fasteners, because they are insulated in wrappings of friable asbestos. Our need for the fasteners outweighs such legal technicalities. I extend to you my full support and cooperation in resisting any legal challenges to your immediate production of fasteners for our purposes.

Yours,

J.P. Todd, Branch Chief
Integration Division
Industrial Management Bureau
U.S. Department of Commerce

- QUESTIONS:**
- 1. If XYG fails to deliver the 45,000 ferroplastic fasteners, will XYG be in breach of contract? Why or why not?**
 - 2. What, if anything, is missing in this document that prevents it from being a contract?**


ELEMENTS OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="142 352 224 430" data-label="Image"></div>	<p>c. Question: “If XYG fails to deliver 45,000 ferroplastic fasteners, will XYG be in breach of contract?” [Ask for a show of hands for those who believe the answer is yes.]</p> <p>Answer: No—the letter is missing one or more of the elements of a contract that must be present for the XYG to be bound by it.</p> <p>d. Define “offer”</p> <p>An offer is a firm proposal, made by one person to another, with the intent to create a legal (contractual) relationship if the offer is accepted.</p>	
<div data-bbox="142 888 224 966" data-label="Image"></div>	<p>e. Question: “Was there an offer?” [Solicit answers from the class before providing your own]</p> <p>Answer: No—XYG did not make a firm promise to deliver fasteners.</p> <p>Note that an ad in a magazine can include an offer—especially if the ad comes equipped with an order blank and instructions on placing an order.</p> <p>f. Define “acceptance”</p> <p>The act of accepting the offer. To be binding, the acceptance must be definite; it must be communicated, and it must be unconditional.</p>	
<div data-bbox="142 1476 224 1554" data-label="Image"></div>	<p>g. Question: “Was there acceptance?” [Solicit answers from the class before providing your own]</p> <p>Answer: No—Absent an offer, there is no acceptance. But even if the advertisement could have been construed as a legitimate offer, Todd took exception to the packaging terms as stated in the advertisement. Acceptance must be unconditional.</p>	

ELEMENTS OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>h. Define “consideration”</p> <p>Something of value that changes hands between the parties to a contract. For example, the contractor provides supplies or services for which the Government pays money to the contractor.</p>	
<div style="border: 1px solid black; padding: 2px; display: inline-block; width: 30px; height: 30px; text-align: center; line-height: 30px;">?</div>	<p>i. Question: “Was there consideration?” [Solicit answers from the class before providing your own]</p> <p>Answer: No—Neither the advertisement nor Todd's letter established a price for the fasteners, and there was no commitment on price in Todd's letter.</p>	
	<p>j. Define “competent parties”</p> <p>The two (or more) parties to a contract must be legally competent to enter into contracted relationships. This means that the parties must be of sound mind, are not under the influence of drugs or alcohol, and are legal entities.</p>	
<div style="border: 1px solid black; padding: 2px; display: inline-block; width: 30px; height: 30px; text-align: center; line-height: 30px;">?</div>	<p>k. Question: “Were both parties competent?” [Solicit answers from the class before providing your own]</p> <p>Answer: Probably not—Note that Todd identified himself as a branch chief, not as a Contracting Officer.</p>	
	<p>l. Define “legality of purpose?”</p> <p>The purpose or subject matter of the contract must be legal.</p>	
<div style="border: 1px solid black; padding: 2px; display: inline-block; width: 30px; height: 30px; text-align: center; line-height: 30px;">?</div>	<p>m. Question: “Was there legality of purpose?” [Solicit answers from the class before providing your own]</p> <p>Answer: No—Todd cannot require performance that would be in violation of law (e.g., producing fasteners with a wrapping of friable asbestos, when XYG is under court order to stop making them).</p>	


ELEMENTS OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>o. State the meaning of “clear terms and conditions?”</p> <p>For a contract to be enforceable, its terms and conditions must be clear enough to permit the courts to conclude that a contractual agreement was intended.</p> <p> p. Question: “Are the terms of this letter clear?”</p> <p>Answer: No—Words like "your best fastener" and "as soon as they are available" leave considerable doubt about vital aspects of expected performance.</p> <p>q. Summarize the elements of a contract, from the perspective of the Federal acquisition process.</p> <ul style="list-style-type: none"> • In Federal contracting (other than small purchases), the Government generally solicits offers from private sector vendors. This puts the Government in a position of accepting or rejecting the offers. • Consideration is generally in the form of money paid by the Government in consideration for services rendered or supplies delivered. Bear in mind that the Government must receive benefit from every contractual agreement, including agreements to change the terms and conditions of an existing contract in any way that affects the substantive rights of the parties (e.g., extending the delivery date). • With respect to contractual capacity, the most common issue is whether a Federal employee has contractual authority as an agent of the Government to enter into a contract or to order a change in the terms and conditions of an existing contract. We will discuss Agents and the Law of Agency in Lesson 4. • Legality of purpose can be an issue. Absent a court order, for instance, the Government may not contract with a private vendor to bug the headquarters of the Socialist Workers party. • Terms and conditions must be clear. Unfortunately, disputes over contract language have been common enough to warrant the establishment of a formal procedure for resolving such disputes—which will be discussed in Lesson 9. 	

DISCHARGE OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
P-6	<p>a. Transition— Once a contract has been signed, when does it conclude? The answer is that a contract concludes when it has been discharged.</p> <p>b. Define “discharge”</p> <p style="padding-left: 40px;">The obligation incurred by each party when it entered into the agreement has been excused; the parties are no longer bound to perform.</p> <p>c. Identify three ways in which a contract may be discharged:</p> <ul style="list-style-type: none"> • Performance by both parties (either complete or substantial). • Mutual rescission of the contract (e.g., both parties agree to back out). • Substitution of a new contract for an old contract (in Federal contract law, known as a contract modification). Examples: <ul style="list-style-type: none"> - Novation agreements, which substitute one party for another. - Supplemental agreements, in which the parties agree to delete, change, or add to the original terms and conditions (thus discharging their respective obligations to comply with the original terms). <p>d. Identify additional ways in which a contract may be discharged (over and above what is in the textbook). Examples:</p> <ul style="list-style-type: none"> • Impossibility of performance. • Commercial impracticability. • Bankruptcy (which generally relieves the debtor of contractual obligations to its creditors). • Anticipatory repudiation by one of the parties (which discharges the obligations of the other party). • Material breach by one of the parties (which also discharges the obligations of the other party). 	

DISCHARGE OF A CONTRACT

Ref.	Steps In Presenting The Topic	Instructor Notes
	<ul style="list-style-type: none"> • Non-occurrence of a condition precedent to performance.¹ Suppose you signed a service contract under which you must pay a flat fee of \$100 for repairs each time the equipment breaks down. In this contract, performance is conditional on the occurrence of a malfunction. If the equipment does not malfunction during the year, both parties are discharged from their obligations to one another). <p>TRANSITION TO LESSON 1</p> <p>“Now you know the definition and elements of a contract. But why does the Government write contracts? What do we hope to gain? And how do you know whether or not the contract has best served the public interest?”</p>	

¹In Federal contract law, where performance is conditional upon placement of an order under a requirements contract or upon the exercise of an option—topics that will be discussed in Lesson 7.

LESSON 1

GOALS OF THE FEDERAL ACQUISITION PROCESS

Goals of the Federal Acquisition Process

TOPIC: GOALS OF THE FEDERAL ACQUISITION PROCESS

Ref: Chapter 1

Objective: When you finish this lesson, your students must be able to:

- Identify and define the goals of the Federal acquisition process.

Time: Break for 20 minutes first. Resume at 10:20 AM — 80 Minutes

Method: Lecture/Discussion, Case Study, and Group Exercise.

LESSON PLAN



Ref.	Steps In Presenting The Topic	Instructor Notes
1-1 to 1-16	1.2 PREAWARD GOAL a. Show VG 1-1: Goals of the Federal Acquisition Process (Preaward). State the goals but do not define quality, timeliness, cost, et. al. at this point. Stress that these goals apply to all Federal players in the process (e.g., contracting officers, requirements managers, auditors, budget officers, etc.). Use these goals to judge their contribution. Define “Optimum” in terms of trying to accomplish all of these goals at the same time, while recognizing that there may be tradeoffs between some of the goals. Leave VG 1-1 on the screen during the case study that follows.	

GOALS OF THE FEDERAL ACQUISITION PROCESS

Preaward Goals

- Obtain the optimum market response to requirements for supplies/ services, in terms of:
 - Quality
 - Timeliness
 - Cost
- While:
 - Accomplishing socioeconomic objectives
 - Minimizing business and technical risks
 - Maximizing competition
 - Maintaining integrity

VG 1-1

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 1-2 thru 1-4 	b. CASE STUDY: THE OPTIMAL CONTRACT <ul style="list-style-type: none"> • Ask students to read the case study (Pages CM 1-2 through 1-4). • Have the students read Pages 1-1 through 1-11 of the Text/Reference. • Ask the students to prepare answers to the questions at the end of the Case Study. • While the students are turning to the case study, tell them that the offer made by Arch Less is based on several true incidents. Tell them that you will describe these true incidents after the class has finished discussing the exercise. 	Give the students a time limit (e.g., 30 minutes) to read and discuss this case in their groups.

CASE STUDY

THE OPTIMAL CONTRACT

Mark Brown is a project engineer at the Government's Knipling Research Center. He will be running tests on a newly developed "chip" material on or after July 1, 1995, and wants to make sure that his lab is properly equipped to perform the tests.

After a careful inventory of equipment in his lab, he finds that he will need to acquire a very high-temperature heat chamber. To properly conduct the tests, the heat chamber must meet the following design parameters:

1. Sustain a minimum temperature of 8,000 degrees Fahrenheit to a maximum of 10,000.
2. Have interior dimension of six cubic feet.
3. Be powered by natural gas rather than electricity.

The KRC has a natural gas line, but the KRC building does not presently have the electrical capacity for an electric unit. It would cost a minimum of \$145,000 to repair that deficiency, and take upwards of six months for the electrical work.

☞ Mark prepared a Purchase Request (PR) and hand-carried it the Contracting Officer, Leslie Clark, on January 3, 1994. She determined that natural gas heat chambers are commercially available from six small business concerns at market prices that range from \$525,000 to \$600,000. Hence, she began preparing a Request for Proposals (RFP) to solicit offers, with

delivery to be made on or before May 30. She also planned to limit competition to small businesses through a "total small business set-aside".

The next day, she was invited to lunch by Arch Less, the head of Kress Kilns. Arch then made the following offer:

"I have heard, through the grapevine, that you are about to buy a heat chamber. I have a proposition for you."

"Kress Kilns, for some time, has been making electric kilns for potters. Right now, the largest kiln we make has an interior space of two cubic feet and heats up to 1,000 degrees. But I am anxious to build bigger and better units. So here's the deal. I'll send you a proposal, but I'll leave the price blank. When you open the proposals, identify the lowest price submitted by one of my rivals. Then fill in the blank in my offer by an amount that is, oh, \$10,000 less. I might lose my shirt on the deal, but I have money to lose and a strong desire to learn how to build higher capacity heat chambers."

"Do this for me, and I'll give you a nice position with our company after you retire next year. And, think of it this way, the contract would be optimal for all concerned. You win, because you'll have a good income to supplement your retirement pay. I win, because even if I lose money on this deal, I'll have an opportunity to learn how to build higher capacity heat units. And the taxpayer wins, because the Government will pay a price that is \$10,000 less than any other submitted offer."

"By the way, make sure that you delete the requirement for natural gas, because I don't know natural gas, and I want to stay all electric. Also, you know that I am the largest manufacturer of pottery kilns in the nation. I can't qualify for a small business set aside. Finally, 8,000 degrees is a bit much. Brown can't possibly need that much heat. Let the spec be 7,800 degrees. And I know the market well enough to tell you that the 200 degrees will save the taxpayer as much as \$5,000 in the purchase price of the unit."

"If you don't go along with my offer, bear in mind that I have powerful political connections."

INSTRUCTIONS: **Read Chapter 1. On a sheet of blank paper write the seven goals of the acquisition process and answer the following questions.**

QUESTIONS:

- 1. Is Arch Less right? Would this deal be the best for all concerned?**
- 2. How does Arch Less's proposed deal rack up against the preaward goals? For each preaward goal, write your evaluation of the Arch Less deal against that goal.**

Goal 1—Quality

Goal 2—Timeliness




Goal 3—Cost

Goal 4—Minimizing Business and Technical Risks



Goal 5—Socioeconomic Objectives



Goal 6—Maximizing Competition


Goal 7—Maintaining Integrity

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. Organize the class into small groups and ask each group to reach consensus on answers to the case study.</p> <p>d. For each goal, select a different group and lead the discussion as follows.</p>	
	<p>e. Question: “Is Arch Less right? Would this deal be the best for all concerned?” [Ask for a show of hands for those who believe the answer is yes.]</p> <p>Answer: No—Arch Less is wrong on every count. Let's start with quality.</p>	
1-4 to 1-5	<p>1.2.1 QUALITY</p> <p>a. Define “Quality”</p> <p>Quality is a function of the actual minimum need of the Government. We achieve the goal of quality when the deliverable, after it is put into service, accomplishes the function for which it was acquired.</p> <p> b. Question: “Where does the Arch Less offer fall short on Quality?” [Solicit answers from Group 1 and the rest of the class before providing your own]</p> <p>Answer: To properly conduct the tests, the heat chamber must be able to sustain a minimum temperature of 8,000 degrees Fahrenheit to a maximum of 10,000. If, as Arch Less recommends, the CO lowers the requirement to 7,800 degrees, Mark Brown—the end user—will not be able to run his tests. No matter how much of a price break the Government gets as a consequence, the end user will not be satisfied.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
1-5	<p data-bbox="391 331 721 369">1.2.2 TIMELINESS</p> <p data-bbox="391 417 737 455">a. Define “Timeliness”</p> <p data-bbox="440 476 1114 642">“Timeliness is a question of whether the end user in fact has the supply on hand or the benefit of the service when, and where, and as required for his or her mission.”</p> <p data-bbox="440 661 1032 726">Note that acquisition leadtime includes the time required to:</p> <ul data-bbox="440 737 1097 1052" style="list-style-type: none"> • Prepare specifications and purchase descriptions. • Obtain funding and administrative approvals for purchase requests. • Solicit offers, make source decisions, and award contracts. • Complete, inspect, and accept the work. • Receive, store, and inventory supplies. • Physically distribute supplies to the end users.” <p data-bbox="289 1102 367 1182">?</p> <p data-bbox="391 1102 1118 1268">b. Question: “Where does the Arch Less offer fall short on Timeliness?” [Solicit answers from Group 2 and the rest of the class before providing your own]</p> <p data-bbox="440 1287 1118 1493">Answer: If, as Arch Less recommends, the CO changes the requirement to permit electrical units, additional time (at least an additional six months) would be required to install the electrical capacity for the Kress heat chamber. Poor Mark would have to mark time waiting for the conversion to be made.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
1-6	<p data-bbox="248 289 444 325">1.2.3 COST</p> <p data-bbox="248 373 505 409">a. Define “Cost”</p> <p data-bbox="297 436 911 556">“Cost includes the total amount of money expended by the Government for the acquisition. It includes:</p> <ul data-bbox="310 579 984 1003" style="list-style-type: none"> • The contract price. • Any direct cost of acquiring the item that is not covered in the contract price (e.g., transportation or installation). • Costs of ownership (e.g., inventory, spares, maintenance, repairs, training, etc.), to the extent not covered in the contract price. • The Government's overhead for awarding and administering the contract.” <p data-bbox="146 1056 224 1136"></p> <p data-bbox="248 1056 979 1220">b. Question: “Where does the Arch Less offer fall short on Cost?” [Solicit answers from Group 3 and the rest of the class before providing your own]</p> <p data-bbox="297 1241 971 1482">Answer: It would cost the Government \$145,000 to install the electrical lines necessary for the Kress heat chamber. Hence, even if the purchase price of the Kress heat chamber beats any other offer by \$10,000, the Government's total cost would be higher by \$135,000 if the next lowest offer is for a chamber heated by natural gas.</p> <p data-bbox="146 1518 224 1598"></p> <p data-bbox="248 1518 919 1598">c. Illustrate this point on a flipchart, using the following figures.</p> <p data-bbox="297 1608 894 1644">Ajax (Natural gas chamber): \$495,000</p> <p data-bbox="297 1650 894 1686">Kress (Electric chamber):..... \$485,000</p> <p data-bbox="297 1692 919 1761">Expense of installing electrical lines for the Kress chamber..... \$145,000</p> <p data-bbox="297 1768 971 1837">Total cost of the Kress offer, including costs over and above the proposed price..... \$630,000</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
1-6 to 8	<p>1.2.4 MINIMIZING BUSINESS AND TECHNICAL RISKS</p> <p>a. Define “Risk”</p> <p>“Risk represents the probability that the Government will:</p> <ul style="list-style-type: none"> • Never see an acceptable deliverable. • Accept a deliverable that does not in fact satisfy the end user's actual need. • No longer need the deliverable by the time the user receives it. • Pay more than a reasonable price for the work.” <p>Exhibit 1-4 on page 1-8 lists a few of many, many provisions, clauses, and forms that have been designed largely for the purpose of minimizing such risks.</p>	
	<p>b. Question: “Why is the Arch Less offer unacceptably risky?” [Solicit answers from Group 4 and the rest of the class before providing your own]</p> <p>Answer: Kress Kilns has never made a heat chamber of the type required for this contract. The risk is substantial that Kress will not deliver a chamber that conforms even to the lower specifications. This probability is compounded by the fact that Kress is likely to lose money on the deal—which often results in "short cuts" on quality and claims for overruns.</p>	
	<p>c. Question: “Look at the first clause in Exhibit 1-4 (Contract Award). Note that it provides the right to reject an offer as nonresponsible if the offeror cannot affirm its capability to perform. Would that be a potential basis for rejecting an offer from Kress Kilns?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes.</p>	



Ref.	Steps In Presenting The Topic	Instructor Notes
	1.2.5 SOCIOECONOMIC OBJECTIVES	
1-8 to 1-10	a. Define “Socioeconomic Objectives” Socioeconomic Goals are established by the Congress to accomplish such purposes as illustrated in VG 1-2.	
	b. Show VG 1-2: Socioeconomic Objectives. This viewgraph lists a few examples of socioeconomic objectives.	

SOCIOECONOMIC OBJECTIVES

Examples:

- Use small and small/ disadvantaged business firms
- Use business firms in labor surplus areas
- Pay prevailing wages
- Clean the environment
- Provide employment opportunities for Americans
- Ensure equal employment opportunity
- Get drugs out of the workplace

VG 1-2

	c. Question: “Can you think of any other such socioeconomic goals?” [Solicit answers from the class before providing your own] Among the many possible answers: <ul style="list-style-type: none"> • Veterans preference • Handicapped accessibility.
	d. Question: “Where does the Arch Less offer fall short on socioeconomic goals?” [Solicit answers from Group 5 and the rest of the class before providing your own] Answer: Arch Less is asking Ms. Clark to ignore the Government's socioeconomic goals of setting aside contracts for small businesses.

Ref.	Steps In Presenting The Topic	Instructor Notes
1-10	<p data-bbox="391 289 1040 327">1.2.6 MAXIMIZING COMPETITION</p> <p data-bbox="391 373 1084 411">a. Define “maximizing competition” as a goal.</p> <p data-bbox="440 432 935 470">“Maximizing competition means:</p> <ul data-bbox="451 485 1130 1094" style="list-style-type: none"> • Obtaining independent offers from two or more vendors for each acquisition. • Building and maintaining a base of responsible suppliers who are willing and able to compete for Government contracts. • Encouraging those suppliers to research and invest in new manufacturing technologies and product innovation where such research and investments would help the Government more effectively and economically accomplish its missions • Broadening the industrial and mobilization base, in the event that the Government needs to rapidly build up the armed forces.” <p data-bbox="289 1150 367 1230">?</p> <p data-bbox="391 1150 1133 1314">b. Question: “How would the Arch Less offer, if accepted, inhibit competition?” [Solicit answers from Group 3 and the rest of the class before providing your own]</p> <p data-bbox="440 1335 1114 1503">Answer: On the surface, the Arch Less offer would not entail any reduction in competition. It might even be argued that his deal would result in more competition—inasmuch as both small and large businesses would be equally free to submit offers.</p> <p data-bbox="440 1524 1125 1829">However, maximizing competition is more than a matter of the number of offers received in response to any given solicitation. More fundamentally, this goal is one of building a base of responsible suppliers who are willing and able to compete for Government contracts. If the Government gets a reputation for not playing fairly when awarding contracts, are responsible makers of heat chambers likely to bother preparing and submitting offers on future contracts?</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
1-11	<p data-bbox="248 289 846 325">1.2.7 MAINTAINING INTEGRITY</p> <p data-bbox="248 375 883 411">a. Define “maintaining integrity” as a goal.</p> <p data-bbox="297 434 927 554">“Integrity means dealing fairly and in good faith, and maintaining impartiality and avoiding preferential treatment.”</p> <p data-bbox="297 577 984 676">Explain that Lesson 10 deals extensively with ethics, conflicts of interest, and other matters that, collectively, relate to integrity.</p> <div data-bbox="142 714 224 793" style="border: 1px solid black; padding: 2px; display: inline-block; width: 30px; height: 30px; text-align: center; line-height: 30px;">?</div> <p data-bbox="248 716 927 793">b. Present the true incidents on which this case study is based:</p> <ol style="list-style-type: none"> <li data-bbox="310 819 974 1188">1. For over a year, a small tool-and-die subcontractor ran up a record of losing one bid after another when competing for contracts. The subcontractor asked the prime contractor to investigate. It turned out that the prime contractor's buyer was on the take—and would fill in the blank on the bid of the subcontractor providing the kickbacks. <li data-bbox="310 1213 967 1415">2. A Federal CO provided the same "fill-in-the-blank" service for a prime contractor. When caught, the CO said--“but I saved the Government money on every contract.” <p data-bbox="248 1467 971 1713">Transition—These are the seven goals that you should strive to accomplish in every decision that you make and every task that you perform. It is by these goals ultimately that you should personally measure your self and judge your work.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
1-11 to 1-16	<p>1.2.8 TRADE OFFS</p> <p>a. State that COs rarely can max every goal. Instead, COs generally have to make tradeoffs between goals.</p> <p>b. Provide examples.</p> <p>One example: Under the Buy American Act, contracting officers may pay up to 6% more for a domestic product than for a foreign-made product. This helps accomplish the goal of saving American jobs—at the expense of the goal of minimizing the cost of the acquisition.</p> <p>c. State that the success of an acquisition can be measured in part by the degree to which the contract represents the best market response to the Government's requirement—all seven goals of the process taken as a whole.</p>	
1-16	<p>1.3 POSTAWARD GOAL</p> <p>a. Show VG 1-3: Goals of the Federal Acquisition Process (Postaward).</p> <p>b. State that Lessons 8 and 9 will cover the implementation of these goals.</p>	



GOALS OF THE FEDERAL ACQUISITION PROCESS

Postaward Goals

Assure that purchased supplies/ services are:

- Delivered or performed when and where specified in the contract.
- Acceptable, in terms of conforming to the contract's specifications or statement of work
- Furnished in compliance with other terms and conditions of the contract

VG 1-3



TRANSITION TO LESSON 3

“Chapter 2 in your Text/Reference covers the Political Environment—namely, the different branches of Government and their respective roles in the acquisition process.

“Chapter 2 is optional. You may read it now. Or you may read it later. You will not be asked any questions on the test with respect to Chapter 2.

“Chapter 3 focuses on the Legal Environment—namely, the statutory and regulatory foundations of the Federal acquisition system.”

LESSON 2

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

Organizational Roles and Responsibilities

TOPIC: ORGANIZATIONAL ROLES AND RESPONSIBILITIES

Ref: Chapter 2

Objective: When you finish this lesson, your students must be able to:

- State the role of the legislative branch relative to the acquisition process.
- State the role of the executive branch relative to the acquisition process.
- State the role of the judicial branch relative to the acquisition process.
- State the role of the public and non-Government organizations in the acquisition process.

Time: Optional.

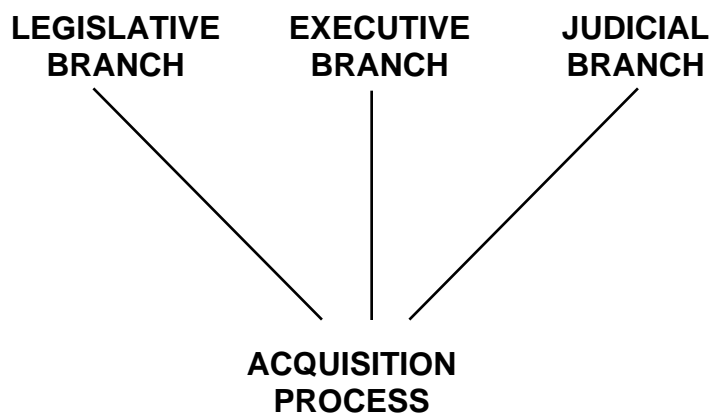
Method: Lecture/Discussion and Case Study.

LESSON PLAN


Ref.	Steps In Presenting The Topic	Instructor Notes
2-1 to 2-3	<p>CHAPTER INTRODUCTION</p> <p>a. Show VG 2-1: Government Affects Acquisition Process.</p> <p>Explain that, as prescribed by the Constitution, responsibility for Federal acquisition is divided among the legislative, the executive, and the judicial branches of Government.</p>	



GOVERNMENT AFFECTS ACQUISITION PROCESS



VG 2-1

Ref.	Steps In Presenting The Topic	Instructor Notes
2-2 to 2-9 	2.1 THE LEGISLATIVE BRANCH a. Show VG 2-2: Legislative Branch (Congress).	


**LEGISLATIVE BRANCH
(CONGRESS)**

Roles Relating to Acquisition:


- Passes Laws
- Appropriates Money

VG 2-2

<p>a. Describe the legislative process.</p> <p>State that the Congress passes bills which, when signed by the President, become Public Laws (also known as statutes). Among other things, such laws establish or constrain policies and procedures for the Federal acquisition system.</p> <p>Laws on the acquisition process will be discussed in Lesson 4.</p>	
--	--

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 331 1123 411">b. Using a flipchart, draw and present the budget timeline.</p> <p data-bbox="440 432 716 464"><u>Budget Formulation</u></p> <p data-bbox="440 485 1097 548">Longrange budget estimates—5 year forecasts of acquisition requirements for the President's Guidelines</p> <p data-bbox="440 569 1036 600">Spring: President issues Budgetary Guidelines.</p> <p data-bbox="440 621 1117 684">Summer: Agencies prepare budget requests based on Guidelines</p> <p data-bbox="440 705 678 737">Fall: OMB review</p> <p data-bbox="440 789 883 821"><u>Authorization & Appropriations</u></p> <p data-bbox="440 842 797 873">January: President proposes</p> <p data-bbox="440 894 824 926">Jan to Oct: Congress disposes</p> <p data-bbox="440 978 829 1010"><u>Budget Execution & Control</u></p> <p data-bbox="440 1031 781 1062">October 1 to September 30</p> <ul data-bbox="440 1073 873 1188" style="list-style-type: none"> • Funds apportioned • PRs prepared • Contracts awarded; \$ obligated <p data-bbox="440 1241 683 1272"><u>Review and Audit</u></p> <p data-bbox="440 1293 1078 1356">Starting in the FY and stretching into the following FYs</p> <ul data-bbox="440 1367 1123 1440" style="list-style-type: none"> • Contract work completed; outlays made • Oversight by IGs, OMB, GAO, Cong committees 	

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. Describe the impact of the budget process on the acquisition process.</p> <ul style="list-style-type: none"> • Forecasts of acquisition requirements and costs are made years before Purchase Requests reach contracting activities. In Lesson 6, we'll talk about the potential contribution of COs if invited into the process of forecasting requirements • Congress votes authority to obligate funds. Obligations are legally binding commitments made by Federal officials that will require cash outlays in some future period. Example: A contract. • Requiring activities usually don't see their money on October 1. Even when the appropriations are approved prior to the FY, the funds still have to go through the apportionment and allotment process within the Executive Branch. This means that PRs for major requirements may not reach the contracting activity for months after the start of the FY. • Budget authority generally comes with enough strings to bind a Gulliver. The most common string: One year money (i.e. money that must be obligated prior to September 30 of that same fiscal year). • To counter complaints about year end spending, there are often requirements at the agency level to obligate funds even earlier—by the end of the 3rd. quarter. This narrows your window for preparing the contract all the more. • Nonetheless, there are many people on the sidelines ready to skewer you if haste makes waste. • Welcome to the wonderful world of contracting. <p>d. Describe the role of GAO as one of the Congressional tools for oversight.</p> <ul style="list-style-type: none"> • Performs audits and investigations of agency programs and management. • Investigates program and contract fraud, and the efficiency and effectiveness of program management. • Comptroller General recommends decisions to agency heads on most protests filed against the Government pertaining to the award or non-award of contracts. 	

Ref.	Steps In Presenting The Topic	Instructor Notes
2-9 to 2-12 	2.2 THE EXECUTIVE BRANCH a. Show VG 2-3: Executive Branch.	


**EXECUTIVE BRANCH
(THE PRESIDENT)**

Roles Relating to Acquisition:

- Develops plans, programs, and budgets for consideration by Congress
- Executes budgets and implements Congressional authorized plans and programs
- Supplements and augments statutory acquisition policies
- Develops and maintains the Federal acquisition regulatory system

VG 2-3

	<p>b. List the principal individuals and organizations in the Executive branch which have a role in the acquisition process.</p> <ul style="list-style-type: none"> • The President • The OMB • The Office of Federal Procurement Policy • Boards of Contract Appeals • The Federal Acquisition Regulatory Council • The Attorney General of the United States • Executive Agency Heads <p>c. Tell the class that they will have an opportunity to read about the roles of these individuals later in the lesson.</p>	
--	--	--


Ref.	Steps In Presenting The Topic	Instructor Notes
2-12 to 2-13 	2.3 THE JUDICIAL BRANCH a. Show VG 2-4: Judicial Branch (The Courts).	

JUDICIAL BRANCH (THE COURTS)

Roles Relating to Acquisition:

- Give meaning to (or serve to interpret):
 - laws passed by the legislative branch, or
 - policies and regulations originated by the executive branch
- Render decisions pertaining to the terms and conditions of a specific contract
- Ensure the constitutionality of the laws and interpret the laws

VG 2-4



	b. Identify the 3 courts that hear cases involving Federal contracts: <ul style="list-style-type: none"> • The U.S. Claims Court. • The U.S. Court of Appeals for the Federal Circuit. • The Supreme Court. 	
2-13 	2.4 THE PUBLIC a. Show VG 2-5: Public Participation.	

PUBLIC PARTICIPATION

Roles Relating to Acquisition:

- Influence Congress to pass or alter legislation
- Comment on proposed Federal rules
- Participate in the acquisition process as suppliers
- Are clients of Federal programs and contracts that support those programs

VG 2-5

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 2-2 	<p>b. Identify types of publics:</p> <ul style="list-style-type: none"> • Trade associations • Professional societies • Lobbying groups • Companies • Individuals <p>c. CASE STUDY: NEW LAW FOR ANIMAL RIGHTS</p> <ul style="list-style-type: none"> • Ask students to read the case study (Page CM 2-2). • Have the students read Pages 2-7 through 2-13 of the Text/Reference (starting with the section “Review and Audit” on page 2-7). • Ask the students to prepare answers to the questions at the end of the Case Study. • After the students have had time to finish this individual assignment, conduct a class discussion. • For the purpose of leading the discussion, the case study and answers are on the next several pages. 	

CASE STUDY

NEW LAW FOR ANIMAL RIGHTS

Congress passed a law in January that prohibits Government contractors from using animals for testing related to research on biological warfare programs and makes it a crime to violate the law. The law is to be implemented by including a special clause in contracts awarded for new procurement beginning 1 April. The President signed the bill.

In May, a contract with Test-A-Germ Corporation for biological warfare research was modified by supplemental agreement to provide additional funds to continue the research work. A Contracting Officer (CO) of the agency included the new clause with the modification. Test-A-Germ, which had been using animals in conjunction with the contract, refused to accept the clause because they believed research already underway would be affected.

The CO stated that the clause was mandatory because the additional funds were for more research than originally anticipated. Test-A-Germ claimed it was really a cost overrun.

Test-A-Germ submitted a claim to the CO, and the CO made a final decision that the clause has to be included. Test-A-Germ decided to file a dispute with the Board of Contract Appeals (BCA).

QUESTIONS:

- 1. What Executive Branch organizations oversee the incorporation of law into the Federal Acquisition Regulation?**
- 2. What Branch of Government is the BCA a part of?**
- 3. If the BCA finds for one of the parties, to whom could the other party appeal the BCA decision?**
- 4. Had the CO ignored the law and continued to let Test-A-Germ experiment with animals, what organizations in the Legislative Branch would have been the most likely to discover the CO's misdeed?**
- 5. Which agency head would be responsible for prosecuting Test-A-Germ for violating the law?**
- 6. If you were the President of Test-A-Germ, what could you do to protest this law?**

CASE STUDY ANSWER

NEW LAW FOR ANIMAL RIGHTS

- 1. What Executive Branch organization was responsible for incorporating the law into the Federal Acquisition Regulation?**

The Office of Federal Procurement Policy and the Federal Acquisition Regulatory Council. Three members of the Council—the Secretary of Defense, the Administrator of NASA, and the Administrator of General Services—are responsible for "signing" changes to the Federal Acquisition Regulation.

- 2. What Branch of Government is the BCA a part of?**

BCAs are part of the Executive Branch. BCA judges are known as "Administrative Judges." Not all agencies have a BCA. Those that do not use the BCA of another agency, if necessary.

- 3. If the BCA finds for one of the parties, to whom could the other party appeal the BCA decision?**

Appeals from the decision of the BCAs (or suits) are filed with the U.S. Court of Appeals for the Federal Circuit.

- 4. Had the CO ignored the law and continued to let Test-A-Germ experiment with animals, what organization in the Legislative Branch would have been the most likely to discover the CO's misdeed?**

The GAO. Another candidate would be a Senate or House committee or subcommittee.

- 5. Which agency head would be responsible for prosecuting Test-A-Germ for violating the law?**

The Attorney General.

- 6. If you were the President of Test-A-Germ, what could you do to protest this law?**

Lobby the Congress.

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="248 327 748 369">TRANSITION TO LESSON 3</p> <p data-bbox="248 411 959 543">“Lesson 3 focuses on the Legal Environment—namely, the statutory and regulatory foundations of the Federal acquisition system.”</p>	

LESSON 3

BASIC STATUTES AND REGULATIONS

Basic Statutes and Regulations

TOPIC: BASIC STATUTES AND REGULATIONS

Ref: Chapter 3

Objective: When you finish this lesson, your students must be able to:

- Identify and describe the four principal sources of Federal Contract Law.
- Identify the basic statutes that control the fundamentals of purchasing and contracting.
- Describe the Federal Acquisition Regulatory system—its sources, maintenance, supplements, and usage.


Time: BREAK FOR LUNCH ONE HOUR—BEGIN THIS LESSON

AT 12:30 AM — 60 Minutes

Method: Lecture/Discussion and group exercise.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
3-1 to 3-2	<p>CHAPTER INTRODUCTION</p> <p>a. State that the Government's ability to procure supplies/ services rests upon law and is limited by law.</p> <p style="padding-left: 40px;">There are hundreds of statutes and thousands of pages of regulations that control or affect the process.</p> <p>b. State that this lesson presents:</p> <ul style="list-style-type: none"> • The Sources of Federal Contract Law • The Basic Statutes • The Federal Acquisition Regulatory System 	

Ref.	Steps In Presenting The Topic	Instructor Notes
3-3 to 3-10	3.1 THE SOURCES OF FEDERAL CONTRACT LAW	
	a. Show VG 3-1: Sources of Federal Contract Law. Leave this VG on the screen as you present the sources.	

SOURCES OF FEDERAL CONTRACT LAW

- The Constitution
- Statutes
- Administrative Law
- Common Law

VG 3-1

- b. Describe the role of the Constitution as a source of Federal contract law.

In 1831 (U.S. vs. Tingey), the Supreme Court declared that the Federal Government has:

- **Inherent power**, based on sovereignty, to enter into contracts, and
- **Implied powers**, as necessary to the proper performance of its duties

The Court also stated guidelines to determine the **validity** of a Government contract:

- Is the Government authorized to act?
- Is the act performed by someone having the authority to act?

- c. Define “statutes”.

A statute is a law enacted by the legislative branch of Government and signed by the President. The statute is identified by its public law number.


State that, later in the lesson, you'll present the basic statutes that govern the Federal acquisition process.

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Define “administrative law,” in terms of the Federal acquisition process.</p> <p>For the purposes of Federal contract law, administrative law consists of:</p> <ul style="list-style-type: none"> • Executive Orders signed by the President. • Decisions by Boards of Contract Appeals. • Decisions by the Comptroller General and administrative law judges. • The "body" of rules and regulations. <p>e. Describe Executive Orders.</p> <p>Executive Orders are used to establish pol10cutive agencies. EO's stay in effect unless rescinded by the signing President or a successor President.</p> <p>f. Have the students turn to Exhibit 3-3 on pages 3-5 to 3-6 of the text/reference. Walk the class through this exhibit.</p> <p>g. Describe the role of the Board of Contract Appeals in terms of establishing precedents for interpreting contract clauses and FAR provisions.</p> <p>Board of Contract Appeals render decisions on disputes arising under contracts. If there is a disagreement between a contractor and an agency as to a contractual requirement in a contract, the contractor will ask the CO for a final decision. If the contractor is not satisfied by the decision, he/she can file an appeal with the appropriate BCA under the "Disputes" clause of the contract.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>h. Describe the role of the Comptroller General in terms of establishing precedents for interpreting acquisition-related statutes and FAR provisions.</p> <p>The Comptroller General (Comp. Gen.) recommends decisions on protests. The Comp Gen decisions are often cited as precedents.</p> <p>Point out that the General Services BCA has a comparable role with respect to protests of ADPE solicitations and awards.</p> <p>i. List some of the rules and regulations that apply to the Federal acquisition process.</p> <ul style="list-style-type: none"> • OFPP Policy Letters • The FAR and agency FAR Supplements. • GSA Supply and Procurement Regulations • Dept of Labor regulations • The Federal Information Resource Management Regulation • Rules of the GSBCA • The Federal Property Management Regulation <p>j. Have the students turn to Exhibit 3-4 on pages 3-8 to 3-9 of the text/reference. Walk the class through this exhibit.</p> <p>k. Point out that the Administrative Procedures Act requires the Government to publish most, but not all, administrative law in both the Federal Register and the Code of Federal Regulations.</p> <p>l. Define common law.</p> <p>Decisions handed down by judges in courts of law that establish precedents.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
3-10 to 3-20	<p data-bbox="391 302 781 342">3.2 BASIC STATUTES</p> <p data-bbox="391 407 1117 489">a. Identify the four, most comprehensive statutes on the Federal acquisition system.</p> <ul data-bbox="415 499 1117 800" style="list-style-type: none"> <li data-bbox="415 499 1117 569">• The Armed Services Procurement Act (title 10 of the U.S. Code, §2301 et. seq.) <li data-bbox="415 579 1117 648">• The Federal Property and Administrative Services Act (title 41 of the U.S. Code, §201 et. seq.) <li data-bbox="415 659 1117 728">• The Small Business Act (title 15 of the U.S. Code, §631 et. seq.) <li data-bbox="415 739 1117 800">• The Office of Federal Procurement Policy Act (title 41 of the U.S. Code, §401 et. seq.) <p data-bbox="391 852 1130 1018">b. State that, in addition to the four statutes previously mentioned, there are hundreds (or, by some accounts, thousands) of other statutes that apply to one or more aspects of Federal procurement.</p>	



Ref.	Steps In Presenting The Topic	Instructor Notes
3-20 to 3-23	3.3 THE FEDERAL ACQUISITION REGULATORY SYSTEM	
	a. Show VG 3-2: The Federal Acquisition Regulatory System	

THE FEDERAL ACQUISITION REGULATORY SYSTEM


FAR + Agency Supplements to the FAR +

Internal Agency Guidance
including:

- Delegations of authority,
- Assignments of responsibility,
- Work-flow procedures,
- Internal reporting requirements

= The Federal Acquisition Regulatory System

VG 3-2

	b. Show VG 3-3: Sources of the FAR.	
---	-------------------------------------	--


SOURCES OF THE FAR

DAR + FPR merged to become the FAR

Also included: NASA procurement regulations and procurement regulations of other executive agencies

VG 3-3

	c. Explain that the FAR was created to present one, Governmentwide face to industry—given industry complaints about having to learn one set of acquisition procedures when selling to the Department of Defense, for example, and another when selling to Commerce.	
--	---	--

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. State that the FAR essentially compiles and consolidates the requirements of:</p> <ul style="list-style-type: none"> • Statutes • Executive Orders • OMB Circulars • OFPP Policy Letters • Policies from previously existing regulations (especially the DAR and FPR) • Agency policies subsequently adopted by the FAR • Decisions by the Comptroller General (head of the GAO), decisions by BCAs, the Courts, and case and common law. <p> e. Show VG 3-4: The Federal Acquisition Regulatory System</p>	

Maintenance of the FAR


Defense Acquisition Regulatory Council interacts with the Civilian Agency Acquisition Council

The Far Secretariat provides administrative support

VG 3-4


	<p>f. Explain that the FAR is maintained by two separate councils: The Defense Acquisition Regulatory Council and The Civilian Agency Acquisition Council.</p> <p>The two councils have divided the FAR into halves, with each responsible for maintaining one of the halves.</p> <p>Each council considers FAR cases involving its respective half of the FAR. A FAR case is a proposed change to the FAR. When one council approves a FAR case, the case is referred to the second council for review and concurrence.</p>	
--	--	--

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 289 974 327">g. State the role of the FAR Secretariat.</p> <p data-bbox="438 344 1112 447">The FAR Secretariat provides administrative support. The Secretariat prints, publishes, and distributes the FAR.</p> <p data-bbox="391 485 675 522">h. Describe FACs.</p> <p data-bbox="438 539 1068 642">After approval by the two councils, changes to the FAR are issued as Federal Acquisition Circulars (FAC).</p> <p data-bbox="438 659 1101 730">FACS are numbered consecutively as issued and are keyed to the last reissuance of the FAR.</p> <p data-bbox="438 747 1089 884">When the original (1984) edition was in use, FACS were numbered 84-XX (e.g., 84-56). Now that the 1990 edition of the FAR has been issued, FACs are numbered 90-XX (e.g., 90-1).</p> <p data-bbox="438 900 1127 972">FACs are distributed for insertion in the loose-leaf edition of the FAR.</p> <p data-bbox="438 989 1117 1125">Because of statutory authorities held by them, the FACs must be "signed" by designees of the Secretary of Defense and the administrators of GSA and NASA.</p> <p data-bbox="391 1163 854 1201">i. Describe FAR Supplements.</p> <p data-bbox="438 1218 1127 1354">Supplements are issued by individual departments and agencies. For example, GSA's FAR supplement is entitled the "General Services Administration Acquisition Regulation" or GSAR.</p> <p data-bbox="438 1371 1101 1474">Supplements generally include additional delegations of authority, policies, procedures, solicitation provisions, and contract clauses.</p> <p data-bbox="438 1491 862 1528">Agency supplements should not:</p> <ul data-bbox="451 1535 1105 1606" style="list-style-type: none"> • Unnecessarily repeat or paraphrase FAR material • Conflict or be inconsistent with the FAR. <p data-bbox="391 1644 1114 1726">j. State that, to make an acquisition decision, you must consult all of the following:</p> <ul data-bbox="415 1732 857 1854" style="list-style-type: none"> • The FAR • Your agency's FAR supplement • Internal guidance 	

Ref.	Steps In Presenting The Topic	Instructor Notes
3-24 to 3-26	3.3.4 USING THE FEDERAL ACQUISITION REGULATORY SYSTEM	
	a. Show VG 3-5: FAR organization	

FAR ORGANIZATION	
Parts 1 - 4	Subchapter A — General
Parts 5 - 12	Subchapter B — Competition and Acquisition Planning
Parts 13 - 18	Subchapter C — Contracting Methods and Contract Types
Parts 19 - 26	Subchapter D — Socioeconomic Programs
Parts 27 - 33	Subchapter E — General Contracting Requirements
Parts 34 - 41	Subchapter F — Special Categories of Contracting
Parts 42 - 51	Subchapter G — Contract Management
Parts 52 - 53	Subchapter H — Clauses and Forms
Parts 54 - 99	Reserved

VG 3-5

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Describe the basic organization of the FAR.</p> <p>The FAR System is codified as Title 48 of the Code of Federal Regulations (CFR). The FAR itself is Chapter 1 of the CFR. Chapter 1 is divided into subchapters and parts, and is printed in two volumes.</p>	
	<p>c. Show VG 3-6: Example of how the FAR is divided.</p>	

EXAMPLE OF HOW THE FAR IS DIVIDED

FAR DIVISIONS	FAR #	TITLE
Part	14	Sealed Bidding
Subpart	14. 1	Use of Sealed Bidding
Section	14. 103	Policy
Subsection	14.103- 1	General

VG 3-6



d. Researching the FAR -- Practical Exercise

- Ask students to read Worksheet for FAR re-search (Page CM 3-2) and FAR Parts 5 & 6 (beginning at CM 3-3).
- Tell the students to answer the questions from the Worksheet by reference to FAR Parts 5 & 6 (beginning on page CM 3-4).
- Tell the students to cite the appropriate FAR reference for each answer.
- After the class has completed the worksheet, ask one student to give you the first answer. Ask the rest of the class whether anyone arrived at a different answer. Proceed until all the answers are filled out.
- For the purpose of leading the discussion, the case study and answers are on the next several pages.

No more than 20 minutes max before starting the class discussion.

Optional Approach: Assign two questions to each group (you can give the same questions to more than one group, as long as all are covered).

WORKSHEET

FAR RESEARCH

Given Parts 5-6 of the FAR (located in Lesson 3 of the classroom materials), reference and answer the following:

1. What is the response time for receipt of bids/proposals from the date of issuance in the solicitation?

☞ **FAR 5.203(b) 30 days.**

2. What statutes require use of the CBD?

FAR 5.201(a) Small Business and OFPP Acts.

3. Where in Part 5 can you find guidance on releasing information?

FAR 5.4

4. Who has the authority to approve advertising in newspapers?

FAR 5.502(a) The agency head or designee.

5. Where would you find the definition for full and open competition?

FAR 6.003

6. How many circumstances are there for contracting without full and open competition?

☞ **FAR 6.302 Seven. Also note the exceptions that authorize the exclusion of sources in §6.2.**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Describe the organization of agency supplements to the FAR.</p> <p>Explain that Chapters 2-59 of Title 48 of the CFR are reserved for the acquisition regulations of the executive agencies. Some examples are:</p> <ul style="list-style-type: none"> • DoD -- Chapter 2 • HHS -- Chapter 3 • GSA -- Chapter 5 • NASA -- Chapter 18 <p>Using the GSA as an example, GSAR (General Services Acquisition Regulation) implementations of the FAR are preceded by a 5. For example, FAR 6.304(a)(1) requires approval at a level above the CO. It is up to GSA to identify that level. In the GSAR, the coverage is at 506.304.</p> <p>If an agency needs to supplement the FAR, and there is no counterpart in the FAR, the agency will identify such material by the numbers "70" and up. For example, if the GSAR added something unique to FAR Subpart 6.3, it would be numbered in the GSAR as 506.370. A whole subpart added to FAR Part 6 would be numbered 506.70.</p> <p>TRANSITION TO LESSON 4</p> <p>“Lesson 4 focuses on the Internal Environment—namely, how agencies organize and staff for acquiring goods and services.”</p>	

LESSON 4

ACQUISITION

ROLES AND RESPONSIBILITIES

WITHIN AN AGENCY

(THE PLAYERS)

Acquisition Roles and Responsibilities Within an Agency (The Players)

TOPIC: ACQUISITION ROLES AND RESPONSIBILITIES WITHIN AN AGENCY (THE PLAYERS)

Ref: Chapter 4

Objective: When you finish this lesson, your students must be able to:

- Describe a typical approach to organizing the acquisition function within a department or agency.
- Define the Law of Agency.
- Identify and define the roles and responsibilities of contracting officers, other contracting personnel, requirements managers, contracting officer representatives, and other interested parties.



Time: 1:30 AM — 60 Minutes

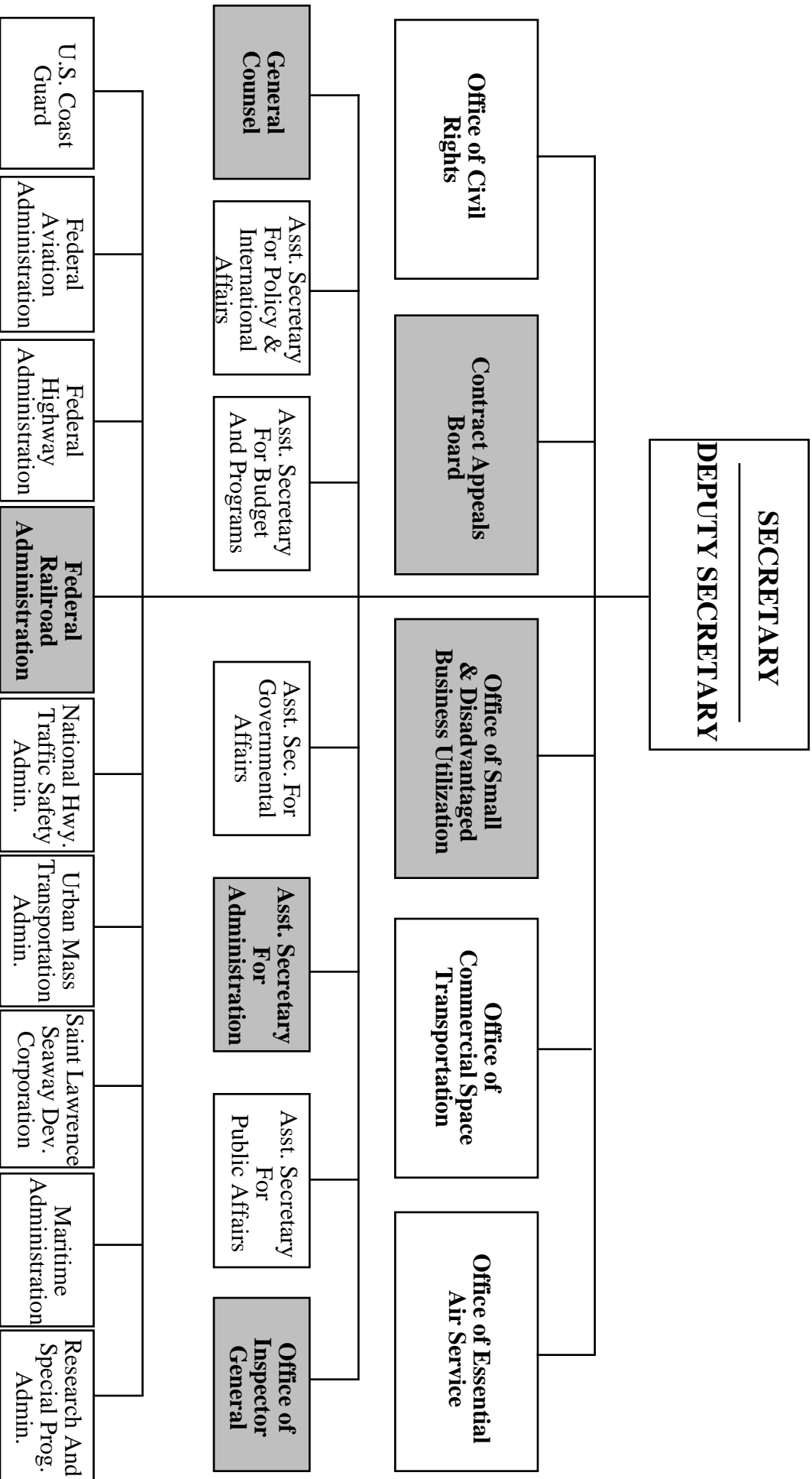
Method: Lecture/Discussion and Roleplay.

LESSON PLAN



Ref.	Steps In Presenting The Topic	Instructor Notes
4-1 to 4-10	<p>4.1 TYPICAL ORGANIZATION WITHIN AGENCIES</p> <p>a. State that no two agencies are exactly alike in how they organize and staff the acquisition function.</p> <p>Explain that the specific acquisition roles and responsibilities of personnel vary from agency to agency.</p> <p>To fully understand your own position in relation to the acquisition system of the agency, you will therefore need to research your agency's:</p> <ul style="list-style-type: none"> • Mission • Organization charts • Delegations of authority • Supplement to the FAR 	

Acquisition Roles and Responsibilities Within an Agency
(The Players)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. State that there are some semi-constants in how Federal departments and agencies organize and staff the acquisition system.</p> <ol style="list-style-type: none"> 1. The agency head establishes overall agency policy, appoints persons to fill key positions, and has "unlimited" procurement authority. <p>Among other duties, the agency heads are generally responsible for designating a Procurement Executive and a Competition Advocate. Explain that the senior procurement executive is often the highest level of acquisition/procurement authority within an agency. This person establishes major procurement policies and ensures compliance with them.</p> <ol style="list-style-type: none"> 2. Most agencies have a centralized acquisition policy office under the Procurement Executive. This office typically is responsible for such functions as: <ul style="list-style-type: none"> • Issuing the agency's FAR Supplement • Procurement Management Review [define] • Contract Clearance [define] • Career Management 3. Executive agencies also tend to have separate boards or offices for such functions as: <ul style="list-style-type: none"> • Contract Appeals • Small & Disadvantaged Business Utilization Advocates • Legal Counsel <p>Explain that parallel positions, offices, and organizations are often found in regional headquarters and in the headquarters of major suborganizations.</p> <ol style="list-style-type: none"> 4. Contracting offices tend to be located in the "administrative" chain of command for the organizations that they support. 	<p>Note—the roles of small business advocates and lawyers will be covered at a later point in this lesson.</p>
	<p>c. Show VG 4-1: The DOT Organization Chart.</p> <p>If students have trouble seeing this VG, have them look at Exhibit 4-2 in the text reference (page 4-4).</p> <p>Explain that the U.S. Department of Transportation (DOT) is an example of an agency with multiple missions. DOT will serve as an example of how the acquisition function is organized.</p>	



Acquisition Roles and Responsibilities Within an Agency (The Players)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Identify offices within the Secretary's Office that have acquisition-related roles.</p> <ul style="list-style-type: none"> • The Contract Appeals Board • The Office of Small and Disadvantaged Business Utilization • The Office of Inspector General • The General Counsel's office. • The Assistant Secretary for Administration, to whom DOT's Procurement Executive reports <p> e. Show VG 4-2: Asst Secretary for Administration Organization Chart (DOT).</p> <p>If students have trouble seeing this VG, have them look at Exhibit 4-3 in the text reference (page 4-5).</p> <p>In DOT, the Procurement Executive is the Director of Acquisition and Grant Management. The Competition Advocate is on the staff of the Office.</p>	<p>Note—the role of personnel in these offices will be covered at a later point in this lesson.</p>

DOT — ASST. SECRETARY FOR ADMINISTRATION ORGANIZATION CHART

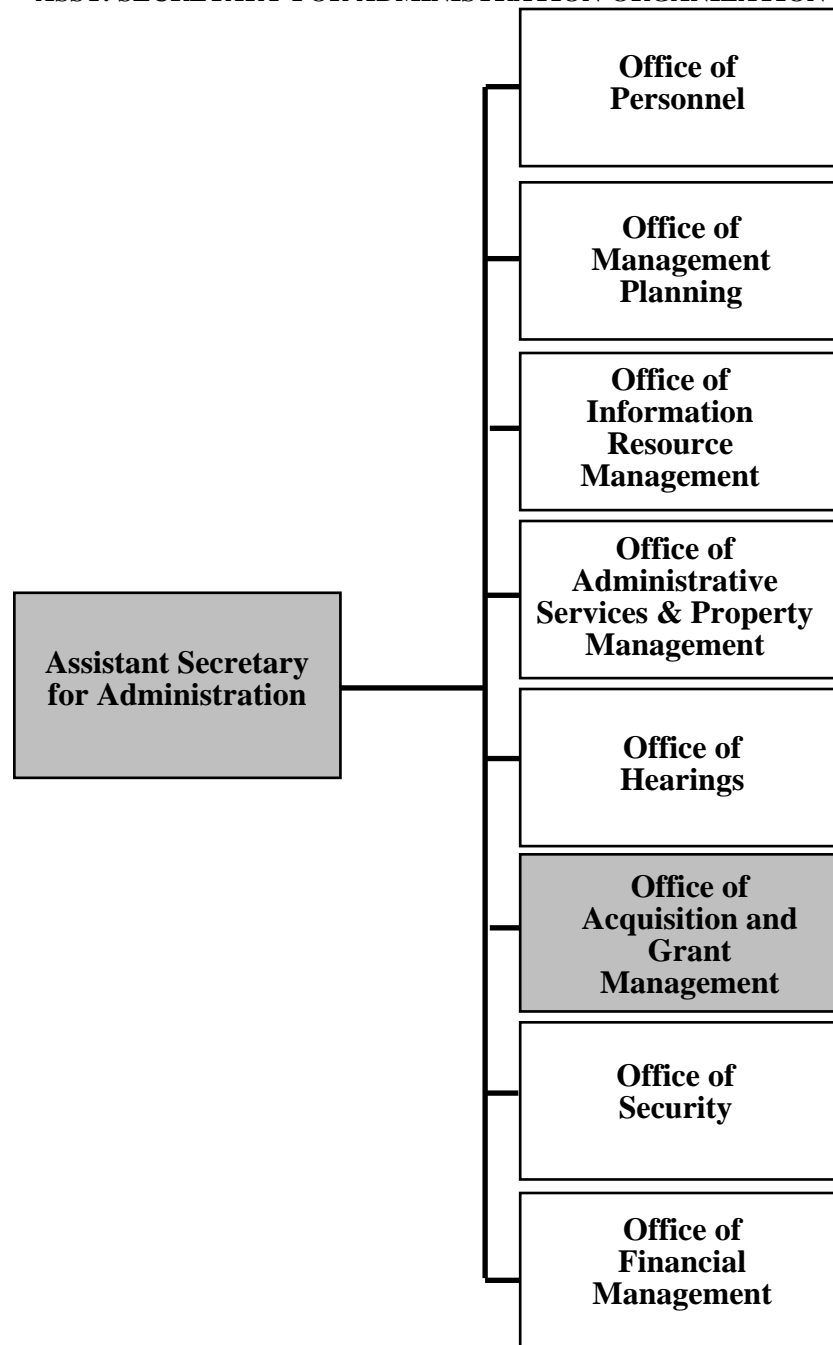


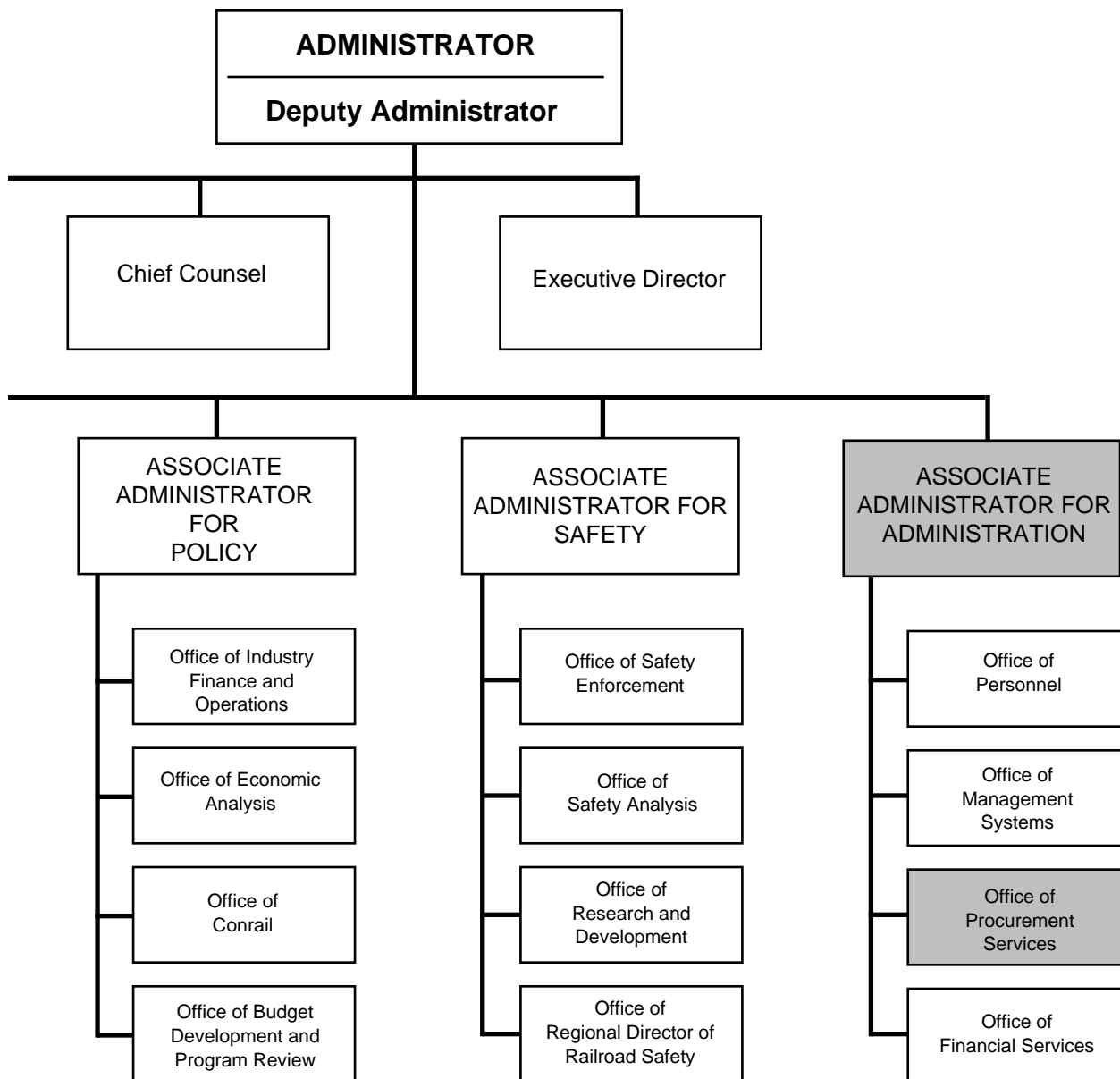
Exhibit 4-3. DOT — Organization Chart for the Office of the Assistant Secretary for Administration.



f. Show VG 4-3: Federal Railroad Administration.



If students have trouble seeing this VG, have them look at Exhibit 4-4 in the text reference (page 4-7).

Acquisition Roles and Responsibilities Within an Agency
(The Players)



Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 300 1131 380">g. Describe how the Federal Railroad Administration has organized the acquisition function.</p> <p data-bbox="436 401 1131 674">Its contracting activity (i.e., Office of Procurement Services) is under the Associate Administrator for Administration. The Office of Procurement Services enters into contracts on behalf of the requiring activities within the Federal Railroad Administration (e.g., the Office of Research and Development, the Office of Northeast Corridor Improvement Project Engineering, etc.).</p> <p data-bbox="436 695 1131 827">Note that Office of Procurement Services works under the policies, reporting requirements, and regulatory controls that flow down from the Office of Acquisition and Grant Management.</p>	

Acquisition Roles and Responsibilities Within an Agency
(The Players)

Ref.	Steps In Presenting The Topic	Instructor Notes
4-10 to 4-16	<p data-bbox="245 296 919 333">4.2 KEY ACQUISITION PERSONNEL</p> <p data-bbox="245 384 727 422">a. Define the “Law of Agency”.</p> <p data-bbox="293 441 980 575">Under the law of agency, one party, known as the principal, appoints another party, known as an agent, to enter into a business or contractual relationship with a third party.</p> <p data-bbox="142 625 224 705"></p> <p data-bbox="245 630 964 793">b. Question: “In Government contracting, who is the principal? Who is the agent? Who is the third party?” [Solicit answers from the class before providing your own]</p> <p data-bbox="293 814 951 911">Answer: The Government is the principal, the contracting officer is the agent, and the third party is the contractor.</p> <p data-bbox="245 961 980 1066">c. Stress that, for a Government contract to be valid, it must be entered into by a duly appointed CO acting within the scope of his or her authority.</p> <p data-bbox="142 1108 224 1188"></p> <p data-bbox="245 1113 911 1188">d. Show VG 4-4, 4-4a, 4-4b, and 4-4c: Procurement Personnel.</p> <p data-bbox="293 1213 959 1276">Keep the appropriate viewgraph on the screen as you discuss the role of each official.</p>	

 **PROCUREMENT PERSONNEL**

VG4-4 Contracting Officers

- PCO
- ACO
- TCO

4-4a Contracting Personnel

- Contract Specialist
- Contract Negotiator
- Contract Administrator
- Contract Price/Cost Analyst
- Contract Termination Specialist
- Procurement Analyst

4-4b Contracting Officer Representatives

- COR
- COTR

4-4c Other Acquisition Personnel

- Program and Requirements Managers
- Quality Assurance Specialists
- Transportation, Logistics, and Supply Specialists
- Property Managers
- Auditors and Accountants

4-4d Other Acquisition Personnel (Con't)

- Legal Counsel
- Small Business Advocates
- Competition Advocates
- Other Interested Parties

VGs 4-4 through 4-4d

e. Describe the role and responsibilities of contracting officers.

Have the students turn to page 4-14 and read Exhibits 4-5 and 4-6. Note that Exhibit 4-5 is taken from FAR 1.602; Exhibit 4-6 from an occupational analysis of procurement-related tasks.

Acquisition Roles and Responsibilities Within an Agency
(The Players)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Identify and define the different types of contracting officers.</p> <p>CO--Generalists who may perform the functions of PCOs, ACOs, and TCOs for assigned contracts.</p> <p>PCO--Procuring Contracting Officer. Manages the planning, solicitation and award of a contract; signs it.</p> <p>ACO--Administrative Contracting Officer. Administers a contract signed by the PCO (if assigned to do so).</p> <p>TCO--Termination Contracting Officer. When contracts are terminated for default or convenience, TCOs negotiate settlements, manage the termination, dispose of property, etc.</p> <p>g. Identify the occupational series of contracting officers.</p> <p>Other than for small purchases, explain that most contracting officers are in the Contract Specialist, GS-1102, series. However, some CO's have contracting authority because of their job (e.g., certain political appointees and military offices.). If the contracting officer's authority is limited to small purchases, the CO's position might be classified in the Purchasing, GS-1105 series.</p> <p>h. Describe Contract Specialists.</p> <p>Contract Specialists are Federal employees whose positions have been classified by OPM in the GS-1102 series. For the most part, personnel in such positions specialize in contracts for supplies and services that are awarded through the sealed bidding procedures of Part 14 of the FAR or through the negotiated procedures of Part 15.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. List and define types of Contract Specialists.</p> <p>Per the classification standard for GS-1102 positions, the following are the titles assigned to personnel in such positions:</p> <ul style="list-style-type: none"> • Contract Specialists (cradle to grave). • Contract negotiator (pre-award). • Contract administrator (post-award). • Contract price/cost analysts. • Contract termination specialist (counterparts to TCOs; specialists in negotiating termination settlement proposals). • Procurement analyst (policy formulation and interpretation, contract clearance, procurement management review, procurement career management, etc.). <p>j. Describe Purchasing Agents.</p> <p>Purchasing Agents are Federal employees whose positions have been classified by OPM in the GS-1105 series. For the most part, personnel in such positions specialize in contracts for supplies and services that are awarded through the simplified purchasing procedures of Part 13 of the FAR or through the delivery orders against indefinite delivery contracts.</p> <p>h. Describe CORs and COTRs</p> <p>A contracting officer's representative (COR) or a contracting officer's technical representative (COTR) are delegated limited authority by contracting officers for certain contractual-related decisions. CORs often are employees of the requiring activity.</p> <p>Typical duties:</p> <ul style="list-style-type: none"> • Monitor technical performance by reviewing progress reports, making plant visits, etc. • Inspect deliverables and prepare receiving reports. • Compare progress with delivery schedules and cost objectives. • Advise the CO of any problems with performance. • Review technical issues in proposed contract modifications. 	


Acquisition Roles and Responsibilities Within an Agency
(The Players)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. Describe Requirements Managers</p> <p>Requirements managers are generally responsible for a program. Among other things, this entails identifying the supplies or services that are needed to support the program. To the extent that such supplies and services must be obtained through the acquisition system, requirements managers are the direct clients of the contracting officer.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Prepare statements of work and purchase requests. • Identify and draft applicable technical evaluation factors. • Review technical and business management proposals from offerors. • Participate in factfinding and negotiations. • Rank proposals against technical and management evaluation factors. • Review offerors' technical capabilities. • After contract award, function as CORs. <p>j. Describe the role and responsibilities of quality assurance personnel.</p> <p>These personnel specialize in the functions of inspecting and accepting deliverables under Federal contracts.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Test supplies for acceptability under the contract. • Review contractor quality assurance programs. <p>k. Describe the role and responsibilities of transportation managers .</p> <p>These personnel specialize in the functions of moving supplies from one location to another.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Ensure that contractors comply with transportation rules and regulations. • Determine the best shipping method. 	

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 289 1143 369">l. Describe the role and responsibilities of logistics and supply managers .</p> <p data-bbox="440 390 1110 457">These personnel specialize in the functions of managing Federal inventories.</p> <p data-bbox="440 474 857 508">Typical acquisition-related duties:</p> <ul data-bbox="440 516 964 718" style="list-style-type: none"> • Forecast requirements. • Determine economic order quantities. • Initiate purchase requests. • Track receipt and delivery of supplies. • Distribute supplies. <p data-bbox="391 764 1122 844">m. Describe the role and responsibilities of property managers .</p> <p data-bbox="440 865 1062 961">Many property managers specialize in Federal property that has been furnished to or acquired by contractors.</p> <p data-bbox="440 982 857 1016">Typical acquisition-related duties:</p> <ul data-bbox="440 1024 1122 1331" style="list-style-type: none"> • Assign Government property to contractors. • Monitor the property control systems of contractors. • Monitor the contractor's compliance with the property clauses of the contract. • Assess damage to Government property. • Recommend method for disposing of property at the end of the contract. <p data-bbox="391 1369 1101 1449">n. Describe the role and responsibilities of auditors and accountants.</p> <p data-bbox="440 1470 857 1503">Typical acquisition-related duties:</p> <ul data-bbox="440 1512 1133 1818" style="list-style-type: none"> • Audit cost and pricing data provided by an offeror. • Recommend positions on proposed elements of cost. • Evaluate offerors' financial responsibility. • Confirm the correctness of the contractor's invoices for payment. • Review accounting and cost estimating systems. • Review indirect cost rates for billing purposes. 	

Acquisition Roles and Responsibilities Within an Agency
(The Players)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>o. Describe the role and responsibilities of lawyers.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Review proposed contracts for legal sufficiency. • Advise CO on protests and disputes. • Interpret policies and regulatory requirements. <p>p. Describe the role and responsibilities of small business advocates.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Recommend that a contract be set-aside for competition among small businesses. • Identify opportunities for placing contracts with 8(a) suppliers. • Identify "break-out opportunities." • Review an offeror's plan for placing subcontracts with small businesses. <p>q. Describe the role and responsibilities of competition advocates.</p> <p>Typical acquisition-related duties:</p> <ul style="list-style-type: none"> • Review procurement plans and analyze specifications to identify and discourage "barriers" to full and open competition. • Identify "break-out" opportunities. • Review justifications for other than full and open competition. <p>r. Identify other interested parties.</p> <p>(e.g., reliability and maintainability specialists, value engineering program specialists, and streamlining advocates).</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>s. Did We Really Buy A \$300 Hammer?</p> <ul style="list-style-type: none"> Choose four students to play the roles of the Head of the Contracting Activity (HCA), contracting officer (CO), engineer (from the Field Operations Support Office), and the lawyer (from the Office of Counsel). Explain that this roleplay will summarize what was learned in Lessons 1-4. After the roleplay, there will be an open class discussion. 	

ROLEPLAY
DID WE REALLY BUY A \$300 HAMMER?

HCA: I called this meeting so that we can discuss the GAO report that was critical of some of our buying practices.

Lawyer: Critical is right! They really hit us for paying \$300 each for a quantity of 500 hammers from an Indonesian-based firm. It looks to me like their criticism is justified.

HCA: Maybe or maybe not. But we need the facts. The press is aware of the report and the agency head wants us to prepare a response to GAO right away. Hopefully, it will soften public criticism of our agency. Budget hearings start next month on the "Hill" and we don't want adverse publicity.

CO: (to the HCA) Well, you know that I handled this purchase. I didn't get competition because the requiring activity said that the hammers are custom designed for underwater use by Navy SEALs, and that Arm and Hammer alone was willing to meet their specs in time to get the hammers to the SEALs.

Lawyer: The Navy uses seals?

CO: SEALs are underwater demolition experts. Most of their equipment is of special design. Anyhow, the requiring activity said that only one company could make the hammers.

HCA: Did they justify that to you in writing?

CO: I didn't ask them to -- should I have? I felt they knew more about their needs than I do.

Acquisition Roles and Responsibilities Within an Agency
(The Players)

- Engineer: That's right! We know what we want and who can give us what we want. In fact, we talked to 2 or 3 tool companies before we came to you. Arm and Hammer agreed to charge no more than \$300, and that was the best price we got over the phone anyway. No American firm was willing to charge less than \$315 per hammer. It seems to me that the contracting office should buy what we engineers want!
- HCA: Then you admit that the requirement could have been competed?
- Engineer: Not if we were to get delivery when I wanted delivery. The SEALs need the hammers for an underwater construction project that begins this June. Arm and Hammer was the only company willing to take my specs over the phone and begin work. Their shop foreman promised me that the hammers would be ready for shipment by the time the CO got the paperwork to Arm and Hammer's front office.
- Lawyer: How long have you known that the hammers are needed?
- Engineer: What is this--the third degree? We didn't commit any crime here! So I knew last September that the SEALs would need these hammers; but, hey, I have other work to do. I didn't have time to work up a purchase request until last April.
- Lawyer: You may not have committed a crime, but by not knowing, or following, procurement procedures, you have helped put this agency in an embarrassing position. This procurement seems to have violated several statutes.
- CO: Really? I am fairly new at this. I referred to some of the regulations but I didn't look at the statutes. What statutes are you talking about? Also, I don't really understand what the GAO has to do with this. I thought they audited accounting records.
- HCA: (to the CO) How about the Competition in Contracting Act, the Buy American Act, and any number of provisions of the Federal Property and Administrative Services Act? We can talk about that and the GAO later. I realize that because of a heavy workload we gave you assignments without proper training. In fact, we plan to send you to the Basic Procurement course next month.
- Engineer: Let's get back to the hammers. We got what we needed when we needed them and, as far as I know, \$300.00 each isn't too much for these custom-tailored, underwater hammers.
- Lawyer: Maybe not, but GAO doesn't see it that way. Their opinion may influence the appropriation committees to really challenge our budget requests.
- HCA: Right now, I am not concerned with next year's budget. What I want is to list the factors we should have considered in making this purchase. Then, we will see what the outcome might have been if we had touched all bases. Maybe we will "luck-out" and be able to show that the purchase wasn't so bad after all.

QUESTIONS:

1. **Looking at the goals of the acquisition process from Chapter 1, which, if any, were at risk in this scenario?**
- ☞ 2. **Was it fair for the lawyer to criticize the CO's ignorance of statutes?**
3. **Critique the role of each player in this process.**

**ANSWER KEY AND DISCUSSION POINTS
FOR LESSON 4--ROLEPLAY**

1. **Looking at the goals of the acquisition process from Chapter 1, which, if any, were at risk in this scenario?**

Timeliness--Part of the lead time in any procurement is the time taken within a requiring activity to work up a purchase request. By waiting until the last minute to file a purchase request, the engineer gambled with delivery times.

Socioeconomic (Providing employment opportunities for American workers—Buy American Act) (Chapter 1)—Domestic companies get a 6% edge on foreign competitors (12% if the domestic concern is a small business). In this case, the lowest offer from an American firm (\$315) was within that 6% margin—the American company should have won the award.

Competition -- No attempt to reach all potential suppliers (Chapter 1). In this case, urgency was no excuse for taking shortcuts [FAR 7.103: agency heads are required to prescribe procedures for ensuring that in no case is a contract entered into without full and open competition on the basis of a lack of acquisition planning. Also, even when “Urgency” justifies other than FAOC, agencies shall request offers from as many potential sources as is practicable under the circumstances.]

Integrity -- engineer not authorized to make presolicitation contacts (Chapter 1). See also FAR 15.402(b).

2. **Was it fair for the lawyer to criticize the CO's ignorance of statutes?**

COs generally refer to regulations but not statutes. However, statutes are incorporated in the regulations, and the inexperienced CO didn't even know that (Chapter 3).

3. **Critique the role of each player in this process.**

CO -- Very inexperienced.

HCA -- Should never have assigned this case to the CO.

Lawyer -- Didn't do anything wrong. All contracts are subject to a review for legal sufficiency, but the case does not state that this lawyer had the responsibility of this review.

Engineer -- Contacted sources improperly (integrity). Violated the law of agency. Doesn't understand the process. This points out that **everyone** must understand the process.

Acquisition Roles and Responsibilities Within an Agency (The Players)

LESSON 5

INTRODUCTION

TO THE FEDERAL

ACQUISITION PROCESS

Introduction to the Federal Acquisition Process

TOPIC: INTRODUCTION TO THE FEDERAL ACQUISITION PROCESS

Ref: Chapter 5

Objective: When you finish this lesson, your students must be able to:

- Identify phases and functions of the acquisition process.
- Identify the basic business issues related to each function.
- Identify the general criteria for assessing performance of those functions.

Time: BREAK FOR 20 MINUTES—START AT 2:50 — 40 Minutes

Method: Lecture/Discussion.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
5-1 to 5-10	a. State the 3 phases of the acquisition process— <ul style="list-style-type: none"> • Presolicitation • Solicitation and Award • Post-Award Administration b. Show VG 5-1: Presolicitation Functions.	

PRESOLICITATION FUNCTIONS

1. Determination of Need
2. Initiating the Procurement
3. Analysis of Requirement
4. Sourcing

VG 5-1

c. For each function in the slide, present the related business question or questions.



WARNING—DO NOT ATTEMPT TO ANSWER THESE QUESTIONS AT THIS POINT OR DISCUSS THE FUNCTIONS IN ANY DETAIL—THIS WILL BE DONE IN LESSON 6.

Functions

Related Business Questions

Determination of Need

What does the Government need, and how can the Government best meet the need?

Initiating the Procurement

Is the purchase request acceptable as the basis for the procurement, and what are the steps in initiating the procurement?

What facts do you need about the requirement and the market to make good business decisions, and where do you get these facts?

Analysis of Requirement

How can the Government's requirements be stated so as to yield the best market response?


Sourcing

Who should you allow to compete for the procurement?

What factors should you apply in selecting a competing offeror for award?

Which method of procurement will best serve the Government's need?


What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?

Ref.	Steps In Presenting The Topic	Instructor Notes
	d. Show VG 5-2: Solicitation-Award Functions.	

SOLICITATION-AWARD FUNCTIONS

1. Solicitation
2. Evaluation
3. Award

VG 5-2

	<p>e. For each function in the slide, present the related business question or questions.</p> <p>WARNING—DO NOT ATTEMPT TO ANSWER THESE QUESTIONS AT THIS POINT OR DISCUSS THE FUNCTIONS IN ANY DETAIL—THIS WILL BE DONE IN LESSON 7.</p>	
---	--	--

Functions

Related Business Questions

Solicitation

What terms and conditions should be incorporated in the solicitation?

How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?

Evaluation— Sealed Bidding

Which, if any, of the submitted bids should be considered for award?

Evaluation— Negotiation

Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?

What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?


Award

Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?

How should the contract be executed and announced?

How can any protests of the award be resolved?


Has there been any evidence of fraud or other misconduct in awarding the contract?

Ref.	Steps In Presenting The Topic	Instructor Notes
	f. Show VG 5-3: Post-Award Functions.	

POST-AWARD ADMINISTRATION FUNCTIONS

1. Start-up
2. Quality Assurance
3. Payment and Accounting
4. Closeout
5. Contract Modification
6. Termination
7. Claims

VG 5-3

	g. For each function in the slide, present the related business question or questions.	
	WARNING—DO NOT ATTEMPT TO ANSWER THESE QUESTIONS AT THIS POINT OR DISCUSS THE FUNCTIONS IN ANY DETAIL—THIS WILL BE DONE IN LESSONS 8 & 9.	

Functions

Related Business Questions

Start-Up

What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?

When an indefinite-delivery contract has been established, how are goods and services ordered?

Should you consent to proposed subcontracts?

Quality Assurance

How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?

If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?


Should you report poor performance for potential suspension or debarment?

Payment and Accounting

What is owed to the contractor, and when and how should payment be made?

Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?

Closeout	How do you closeout the contract?
Contract Modification	Should you modify the contract, and, if so, how?
Termination	Should you terminate the contract, and, if so, how?
Claims	How should you respond to the contractor's claim?

Ref.	Steps In Presenting The Topic	Instructor Notes
	h. Present the basic criteria for judging your performance of these functions— THE GOALS OF THE FEDERAL ACQUISITION PROCESS.	
	i. Show VG 5-4 and 5-4(a): Goals of the Federal Acquisition Process	

GOALS OF FAP
<p>Preaward Obtain the optimum market response to requirements for supplies and services, in terms of:</p> <ul style="list-style-type: none"> • Quality. • Timeliness. • Price. <p>While:</p> <ul style="list-style-type: none"> • Minimizing business and technical risks. • Accomplishing socioeconomic objectives. • Maximizing competition. • Maintaining integrity. <p>Postaward Assure that purchased supplies and services are:</p> <ul style="list-style-type: none"> • Delivered or performed when and where specified in the contract. • Acceptable, in terms of conforming to the contract's specifications or statement of work. • Promptly and properly reimbursed. <p>Furnished in compliance with other terms and conditions of the contract.</p>

VG 5-4 & 5-4(a)

Ref.	Steps In Presenting The Topic	Instructor Notes
	j. Ask the students to read “Relationship Between Goals and Functions” on page 5-7 of the text/ reference. Give them time to read this material in class and then discuss it.	

RELATIONSHIP BETWEEN GOALS AND FUNCTIONS

In the final analysis, your performance of acquisition functions and related duties should be judged not by:

- How faithfully you have observed the letter of the applicable laws and regulations (although your acquisitions must comply with those laws and regulations).
- The extent of competition for the requirement (although maximizing competition is a subgoal of the process).
- Whether you have obtained a lower price than in prior acquisitions for the supply or service (although price is an important factor .)

Rather, your performance at every step of the way in the acquisition process should, in the final analysis, be judged by its contribution to accomplishing the overall goals in Exhibit 5-3.

For example, you may perform every step of the procurement process in apparent compliance with the letter of the applicable laws and regulations. You may have succeeded in obtaining independently prepared offers from three competitors. Yet the prices might be unacceptably high because you:

- Entered the market at the wrong time (e.g., buying produce out of season).
- Used a specification that unnecessarily and unwittingly limited competition to a market segment characterized by premium prices.
- Ordered an uneconomic quantity.
- Imposed an unnecessarily tight delivery schedule relative to delivery terms and conditions that are prevalent in that market.
- Used the wrong type of contract (e.g., a firm fixed price contract for a market that is expecting a high rate of inflation during the period of contract performance).
- Imposed warranty requirements that are far in excess of what is customary for that market.

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>k. Stress that fundamental issue here is not one of propriety as much as it is of soundness of judgement.</p> <p>For example, GAO, when commenting on a protest, rules on matters of law. If the contracting officer's decision is lawful, GAO typically does not second guess the wisdom of that decision. However, that is by no means an endorsement of the contracting officer's judgement.</p> <p>On the other hand, when GAO or the IG audits a contracting activity, the auditors will not hesitate to criticize decisions that are not in the best interests of the taxpayer whether or not there had been any specific infractions of policy.</p> <p>In short, the ultimate measure of a contracting officer is his or her business decisions—in terms of how well those decisions advance the overall goals of the Federal acquisition process.</p> <p>1. Show VG's 5-5 and 5-6, which correspond to Exhibit 5-4 in the Text/Reference. Direct the student's attention to Exhibit 5-4 on pages 5-8 and 5-9 of the Text/Reference—the flowchart of the Federal acquisition process. Show V</p> <p>State that this chart presents the principal duties of Federal Contract Specialists, grouped by phase and function.</p> <p>Inform the students that chapters 6-9 covers each and every one of these duties in the order of this chart .</p> <p>Warn the students:</p> <ul style="list-style-type: none"> • Not every function or duty is performed for every contract. For example, few contracts are terminated. • The actual sequence in which duties are performed often vary from one procurement action to another. 	<p>☞ <i>Use these VG's only to make the point that during the next several days, the students will traverse the entire flowchart from column 1 through to the end.</i></p> <p><i>Spend no time on the contents of these VGs.</i></p>

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>TRANSITION TO LESSON 6</p> <p>a. State that Lesson 6 presents the Presolicitation Phase and all the duties that comprise that phase.</p> <p>b. Inform the class that Lesson 6 also introduces the Smoketown Scenario. This scenario will be used for lessons 6 through 9. In this scenario, a requirements manager has a need for improving the air pollution controls of his coal burning plant. We will follow this potential requirement through every phase of the acquisition system—starting with the requirement manager's first conversations with the CO prior to preparing a Purchase Order.”</p> <p>c. Reading assignment for the evening—Chapters 1 through 6 in the text/reference.</p>	



LESSON 6

PRESOLICITATION PHASE



OVERVIEW OF LESSON 6

<u>TOPIC</u>		<u>Starting Time</u>	<u>Minutes</u>	<u>Page</u>
INTRODUCTION TO LESSON 6		8:00	15	6-1
6.1	DETERMINATION OF NEED	8:15	10	6-2
6.1.1	FORECASTING REQUIREMENTS	8:25	10	6-4
6.1.2	ACQUISITION PLANNING	8:35	10	6-7
6.2.1	PROCESSING THE PURCHASE REQUEST	8:45	5	6-10
6.2.1.1	PURCHASE REQUESTS	8:50	30	6-11
6.2.1.2	FUNDING	9:20	10	6-16
6.2.2	MARKET RESEARCH	9:30	60	6-19
BREAK		10:30	20	
6.3.1	ANALYSIS OF REQUIREMENTS	10:50	5	6-27
6.3.1.1	SPECIFICATIONS	10:55	25	6-28
6.3.1.2	STATEMENT OF WORK	11:20	10	6-33
6.3.1.3	SERVICES	11:30	15	6-34
LUNCH		11:45	60	
6.4.1	EXTENT OF COMPETITION	12:45	5	6-37
6.4.1.1	REQUIRED SOURCES	12:50	15	6-39
6.4.1.2	SET-ASIDES	1:05	15	6-41
6.4.1.3	8(a) PROCUREMENTS	1:20	10	6-43
6.4.1.4	COMPETITION REQUIREMENTS &			
6.4.1.5	UNSOLICITED SOURCES	1:30	20	6-44
BREAK		1:50	20	
6.4.2	SELECTION FACTORS	2:10	45	6-47
6.4.3	METHOD OF PROCUREMENT	2:55	20	6-55
6.4.4	PROCUREMENT PLANNING	3:15	15	6-58

TOPIC: INTRODUCTION TO LESSON 6**Ref:** Page 6-1**Objective:** When you finish this introduction, your students must be able to:

- List the principal functions of the presolicitation phase

Time: 8:00 AM — 15 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
  CM 6-2 to 6-3	a. Show VG 6-1: Presolicitation Phase . b. Refer the class to CM pages 6-2 and 6-3. State that, during the course of Lesson 6, “we will address each of these questions in turn”. Do <u>not</u> answer the questions at this point. c. Select a class member to record answers to the questions. (That class member will recap the Q&As at the end of the Lesson.)	

Functions***Related Business Questions****Determination of Need**

6.1 What does the Government need, and how can the Government best meet the need?

Initiating the Procurement

6.2.1 Is the PR acceptable as the basis for the procurement, and what are the steps in initiating the procurement?

6.2.2 What facts do you need about the requirement and the market to make good business decisions, and where do you get these facts?

Analysis of Requirement

6.3 How can the Government's requirements be stated so as to yield the best market response?

Sourcing

6.4.1 Who should you allow to compete for the procurement?

6.4.2 What factors should you apply in selecting a competing offeror for award?

6.4.3 Which method of procurement will best serve the Government's need?

6.4.4 What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?

*(From VG 6-1)

TOPIC: 6.1 DETERMINATION OF NEED

Ref: Page 6-3


Objective: When you finish Section 6.1, your students must be able to:

- Recognize a typical setting for determining needs.
- State the related business question.
- List the two principal steps in performing the function.

Time: 8:15 — 10 Minutes

Method: Lecture and Reading

LESSON PLAN

Ref.	Steps In Presenting The Topic			Instructor Notes
	a. Show VG 6-2: Determination of Need.			
<div>Determination of Need</div> Determination of Need Forecasting Requirements Acquisition Planning	<div>Initiating the Procurement</div>	<div>Analysis of Requirement</div>	<div>Sourcing</div>	

VG 6-2

CM
6-4

- b.** Refer students to the Smoketown scenario (page CM 6-4). Give them time to read it before proceeding. Talk them through the illustration.
- c.** Present the Setting:
- “Mark Smith, the Program Manager (PM), is weighing his options for complying with the new EPA air quality standards. To make a better decision, Mark plans to consult the Contracting Officer (CO)—Strong Jones.”
- d.** Present the first Basic Business Question:
- “What does the Government need, and how can the Government best meet the need?”
- e.** List the Steps:
1. Forecast the requirement.
 2. Plan the acquisition.

THE SMOKESTACK SCENARIO (CM 6-4)

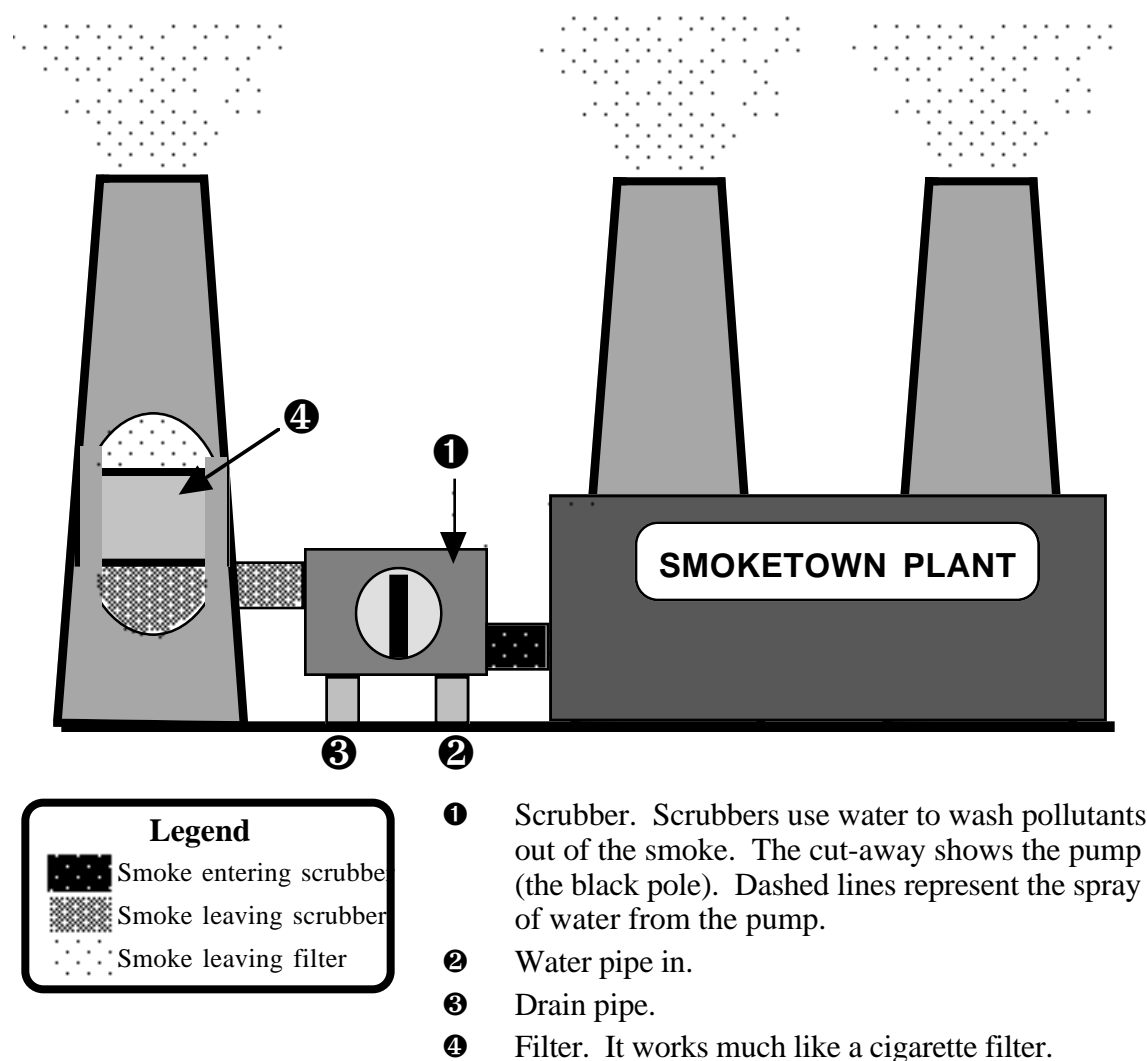
The Environmental Protection Agency (EPA) has issued new air quality standards for coal-burning heat and electric generating plants. The standards will take effect in three years.

When these standards take effect, the Government's Smoketown Plant will be in violation. The plant is in West Virginia. It currently burns 100 tons of West Virginia Grade A coal each and every work day. To comply with the new standards, the plant must reduce total daily emissions of five airborne chemicals by 20% each. The following is the list of seven chemicals, with the new EPA limits on daily emissions:

Ash and Other Particulates ...	1	Ton
Sulfur Dioxide	30	Pounds
Nitrogen Dioxide	10	Pounds
Carbon monoxide	10	Pounds
Hydrocarbons	20	Pounds

The Program Manager (PM) is Mark Smith. The Contracting Officer (CO) is Strong Jones.

EXISTING SMOKETOWN POLLUTION CONTROL SYSTEM



TOPIC: 6.1.1 FORECASTING REQUIREMENTS

Ref: Page 6-4

Objective: When you finish Section 6.1.1, your students must be able to describe:

- Who forecasts requirements.
- Why forecasting is necessary.
- The potential role of Contracting Officers (COs).

Time: 8:25 — 10 Minutes

Method: Lecture/Discussion and Roleplay #1.

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Assert that program managers forecast requirements 5 or more years in advance.</p> <p>Why? To:</p> <ul style="list-style-type: none">• Prepare program plans, schedules, and budgets• Comply with the acquisition planning requirements of Part 7 of the FAR <p>b. Describe the CO's potential role.</p> <ul style="list-style-type: none">• Help requiring activities draft realistic plans, schedules, and budgets• Recommend long-range strategies for meeting the goals of the acquisition process (e.g., quality, cost, timeliness, socioeconomic, risk, competition, & integrity) <p>c. Ask students to find Roleplay # 1 in their classroom materials. Choose two students to read the roles of the project manager and the CO.</p>	



CM
6-5

TOPIC: 6.1.1 FORECASTING REQUIREMENTS (CON'T)

Roleplay #1 (CM 6-5)

Mark Smith (PM): Have you heard about the new EPA standards regarding the effectiveness of pollution-control devices in smoke stacks?

Strong Jones (CO): Yes, I've heard about them.

Smith: Perhaps you didn't know that our stacks do not meet the new standards. In fact, I am here to see whether you can help resolve a very serious problem.

Jones: OK. What's the problem?

Smith: We must either close the Smoketown plant and do the work elsewhere, or reduce our operations by about 20%. Either way, our ability to fulfill our mission will be severely limited.

Jones: Any other options?¹

Smith: One would be to totally replace our equipment. That means replacing the stacks also. We don't believe we can afford the time or the cost of total replacement. However, we believe our equipment might be upgraded at an affordable price, but we are not sure.



Jones: So, to summarize, your four options are:

1. Permanently close the plant.
2. Reduce the plant's hours of operation by 20%.
3. Remove the existing emission control devices and replace them entirely with a new generation of filters and scrubbers.
4. Upgrade the existing pollution control equipment on the three smoke stacks.

Smith: That's right. I would like your help in researching these alternatives.

¹Instructor Note: Why not change from coal to another fuel? Because the Smokestack Plant is in West Virginia—which means that changing fuels may not be politically feasible.



TOPIC: 6.1.1 FORECASTING REQUIREMENTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
 	<p>d. Question: “What information might Jones provide Mark Smith to help Smith select an option and develop a plan for implementing it?”</p> <p>Solicit answers from the class before providing your own. Record their answers on a flipchart.</p> <p>Potential Answers: Include information on—</p> <ul style="list-style-type: none"> • Sources and strategies for maximizing competition • Market prices, conditions, and trends • Production and delivery leadtimes • Costs, milestones, problems, and lessons learned from prior acquisitions <p>e. Question: “How might Jones help Smith in researching his alternatives for complying with the new EPA standard?”</p> <p>Solicit answers from the class before providing your own. Record their answers on a flipchart.</p> <p>Potential Answers: By—</p> <ul style="list-style-type: none"> • Reviewing records of past acquisitions for the same or similar work. • Conducting market research. • Issuing a presolicitation notice. • Issuing an RFP for information or planning purposes (e.g., draft RFP). • Conducting a presolicitation conference. <p>Transition: Inform the class that, based in part on this information, Mark Smith, PM, is leaning towards the option of upgrading existing equipment. Before making a final decision, Smith wants a more definite idea of what it will take to acquire the upgrade.</p>	


TOPIC: 6.1.2 ACQUISITION PLANNING**Ref:** Pages 6-5 to 6-7**Objective:** When you finish Section 6.1.2, your students must be able to describe:


- The purpose and benefits of acquisition planning.
- Participants in planning.
- Typical elements of an acquisition plan.

Time: 8:35 — 10 Minutes**Method:** Lecture/Discussion.**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define acquisition planning.</p> <p>FAR 7.101: “the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.”</p> <p>Note that written acquisition plans are required under Part 7 of the FAR for acquisitions above agency thresholds for cost and complexity—our smokestack scenario might not be of a scale that requires such a plan.</p> <p> b. Question: “What are the reasons for acquisition planning?” [Solicit answers from the class before providing your own]</p> <p>Answers:</p> <ul style="list-style-type: none"> • Maximize competition • Integrate the efforts of all personnel responsible for the acquisition • Ensure that needs are met in a cost-effective and timely manner. <p></p>	

TOPIC: 6.1.2 ACQUISITION PLANNING (CON'T)


Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 6-6	d. Show VG 6-3: This is an interactive view-graph on acquisition planning (see below). Potential answers appear in <i>italics</i> .	

 **Elements of a Typical Acquisition Plan**

- Acquisition Background and Objectives:
 - Statements of need*
 - Applicable conditions*
 - Cost*
 - Capability or performance characteristics*
 - Delivery or performance-period requirements*
 - Trade-offs (e.g., between cost, schedule, & performance)*
 - Risks*
 - Acquisition streamlining (e.g., simplifying the SOW)*
- Plan of Action:

<ul style="list-style-type: none"><i>Sources</i><i>Competition</i><i>Source selection procedures</i><i>Contracting considerations (e.g., contract type)</i><i>Budgeting and funding</i><i>Product descriptions</i><i>Mgt. info. requirements</i>	<ul style="list-style-type: none"><i>Test and evaluation</i><i>Logistics considerations</i><i>Gov't-furnished property</i><i>Gov't-furnished info.</i><i>Environmental considerations</i><i>Milestones</i><i>Participants in acquisition plan preparation</i><i>Other considerations</i>
--	---

VG 6-3/CM 6-6

	e. Ask the students to turn to Exhibit 6-4 on page 6-7 in the text-reference and call out any elements that might apply to the Smoketown scenario. The only elements from the Exhibit that probably will not apply: <ul style="list-style-type: none">• Priorities, allocations, and allotments (i.e., the DoD Priorities & Allocation System)• Contractor vs. Government performance (OMB Circular A-76)• Security (no classified info)	<i>Alternatively, use this VG to walk the students through Exhibit 6-4 on page 6-7 of the text/reference.</i>
---	--	---

TOPIC: 6.1.2 ACQUISITION PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 331 1089 411">f. Tell the class that most acquisition plans will not have every element of Exhibit 6-4.</p> <p data-bbox="391 453 1114 573">g. Recap the Question for Section 6.1: “What does the Government need, and how can the Government best meet the need?”</p> <p data-bbox="440 596 1114 758">Answer: The Government needs to reduce Smoketown's emissions by at least 20%. We considered 4 options. Based, in part, on data supplied by Strong Jones, Mark Smith:</p> <ul data-bbox="451 768 1084 930" style="list-style-type: none"> • Selected the option of upgrading existing pollution control equipment, and • Worked with Jones on a plan for the acquisition. <p data-bbox="391 982 1097 1062">h. Ask the recorder to write the answer on page CM 6-2 of his/her book.</p> <p data-bbox="391 1108 1125 1272">Transition: Now that Mark Smith has an overall plan for the acquisition, he must next complete a Purchase Request and give it to Strong Jones for action.</p>	

TOPIC: 6.2.1 PROCESSING THE PURCHASE REQUEST

Ref. Page 6-10


Objective: When you finish Section 6.2.1, your students must be able to:

- State the basic business question.
- List the two principal steps in processing a purchase request.

Time: 8:45 — 5 Minutes

Method: Lecture.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 6-4: Initiating the Procurement.	

Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing
	<p>Processing the PR Purchase Requests Funding</p> <p>Market Research Market Research</p>		


VG 6-4

<p>b. Present the Setting:</p> <p>“Mark Smith, the PM, has submitted the purchase request (PR) for the procurement.”</p> <p>c. Present the Basic Business Question:</p> <p>“Is the PR acceptable as the basis for the procurement, and what are the steps in initiating the procurement?”</p> <p>d. List the steps:</p> <ol style="list-style-type: none"> 1. Determine whether or not to accept the Purchase Request. 2. Verify funding. 	
--	--

TOPIC: 6.2.1.1 PURCHASE REQUESTS**Ref.** Pages 6-10 to 6-11**Objective:** When you finish Section 6.2.1.1, the students must be able to describe:

- The purpose of a PR.
- Elements of a typical PR.
- Impact of accepting a PR.

Time: 8:50 — 30 Minutes**Method:** Group Exercise/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 6-7	<p>a. Ask the class to read pages 6-10 through 6-13 (Processing the PR and Funding).</p> <p>b. Break students into small groups. Have the students review the partially completed PR on page CM 6-7.</p> <p>See next page for a replica of the PR as it appears on page CM 6-7. See page IG 6-14 for a completed version. This is Mark Smith's PR for the Smokestack Upgrade.</p> <p>c. Ask the class to identify blanks that Mark Smith must complete before Strong Jones, the CO, should accept it.</p> <p>Stress that not every blank on this PR needs to be completed—only those blanks that provide information that Jones needs prior to proceeding any further with the acquisition.</p> <p>d. Call on each group in turn to identify a blank that Mark Smith needs to complete and explain why Jones should not accept the PR until the blank is completed.</p> <p>e. Tell students to correct their PRs and retain them for later class exercises.</p>	

Page of

EPA Form 1900-8(Rev. 9-86) Previous editions are obsolete.

TOPIC: 6.2.1.1 PURCHASE REQUESTS (CON'T)

COMMENTS ON BLANKS IN THE PR

Block 4. The absence of Mark's phone number is not fatal—but Jones will need the number to call Mark with respect to some of the other blocks.

Block 6. Generally needed for acceptance. Mark needs to sign the PR. His signature is perhaps the most important of all the approvals on the page.

Block 7. Mark's failure to recommend a method of procurement is not fatal. Jones could accept the PR without his advice on whether the procurement can proceed on the basis of FAOC. Note—define this term.

Block 12h. Generally needed for acceptance. Jones ordinarily would require Mark to identify the total amount of funds being committed against this acquisition (but see Block 16c).

Block 13. The absence of suggested sources is not fatal. Jones could accept the PR without any suggested sources.

Block 16c. Generally needed for acceptance. Jones would insist upon the signature of a certifying official. However, in Roleplay 2, we will consider Mark Smith's excuse for not having obtained this signature.


Block 14. Failure to fill this block is not fatal. This block has to do with modifications, not original acquisitions.

Block 26. Needed for acceptance. Jones has to know the supplies being ordered, the quantity, and the unit. All that Smith provided was a Government cost estimate (in e).

The Presolicitation Phase

(Shaded areas are for use of procurement office only)

Page of

 EPA PROCUREMENT REQUEST/ORDER		1. Name of Originator Mark Smith		2. Date Of Requisition 15 April 1990			
		3. Mail Code 007	4. Telephone Number		5. Date Item Required 15 October 1991		
6. Signature of Originator			7. Recommended Procurement Method <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Other than FAOC <input type="checkbox"/> Sole source small purchase				
8. Deliver To (Project Manager) Mark Smith		9. Address Plant Maintenance (R&D)		10. Mail Code RDPM	11. Telephone Number 555-5555		
12. Financial Data	a. Appropriation OM 17PQ12006		b. Servicing Finance Office No. HQ-1		NOTE: Item 12(d) Document Type--Contract ="C," Purchase Order = "P"		
FMO Use (c)(13 digits)		D T (d)	Document Control Number (e)(6 digits)	Account Number (f)(10 digits)	Object Class (g)(4 digits)	Amount (h) Dollars Cents	
2789650084301		C	105005	9878767654	0010	\$9 Million --	
13. Suggested Source (Name, Address, ZIP Code, Phone/Contact) Names of 3 sources attached hereto			14. Amount of money committed is: <input checked="" type="checkbox"/> Original <input type="checkbox"/> Increase <input type="checkbox"/> Decrease		15. For Small Purchases Only: Contracting Office is authorized to exceed the amount shown in Block 12(h) by 10% or \$100, whichever is less. <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Approvals							
a. Branch/Office Joseph Lynch		Date 17Apr90		d. Property Management Officer/Designee R.T. Count			
b. Division/Office Elizabeth Davis-Romano		Date 21Apr90		e. (Other (Specify) S.R. Block Facility Engineer			
c. Funds listed in Block 12 and Block 15 (if any) are available and reserved. (Signature of Certifying Official)		Date 23Apr90		f. (Other (Specify)			
17. Date of Order		18. Order Number		19. Contract Number (if any)			
20. Discount Terms		21. FOB Point		22. Delivery to FOB Point by On or before (Date)			
23. Person Taking Order/Quote and Phone No.		24. Contractor (Name, address, ZIP Code)		25. Type of Order <input type="checkbox"/> a. Purchase			
Reference your quote (See block 23)		Please furnish the above on the terms specified on both sides of this order and on the attached sheets, if any, including delivery as indicated.					
<input type="checkbox"/> b. Delivery provisions on the reverse are deleted. The delivery order is subject to the terms and conditions of the contract. (See Block 19)		<input type="checkbox"/> c. Oral <input type="checkbox"/> Written <input type="checkbox"/> Confirming					
26. Schedule							
Item No. (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Estimated Unit Price (e)	Unit Price (f)	Amount (g)	Quantity Accepted (h)
1	Furnish and install modifications to existing emission control devices in each of 3 stacks at the R&D test facility. Upgrade and reinforce stacks to support additional equipment--all IAW attached specification.	1	1	\$3 mil			
					Total \$		
27. United States of America By (Signature)				28. Typed Name and Title of Contracting Officer			

EPA Form 1900-8(Rev. 9-86) Previous editions are obsolete.

TOPIC: 6.2.1.1 PURCHASE REQUESTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="289 342 370 415" data-label="Image"></div>	<p>f. Question: “Does acceptance mean that the PR will not require any further revision?” [Solicit answers from the class before providing your own]</p> <p>Answer: No. Rather, it means that the PR has all necessary elements for proceeding with the acquisition. As the CO works further on the solicitation, questions may arise about the specifications, delivery dates, recommended sources and terms, and the like.</p>	
<div data-bbox="289 772 370 846" data-label="Image"></div>	<p>g. Question: “Once a CO has accepted a PR for action, the PALT clock starts ticking. What is PALT and what does PALT mean to the CO?” [Solicit answers from the class before providing your own]</p> <p>Answer: PALT means Procurement Administrative Lead Time. This means the time from acceptance of the PR to award. Contracting officers are often judged against PALTs.</p>	
<div data-bbox="289 1245 370 1318" data-label="Image"></div>	<p>h. Question: “Having accepted the PR, what does the CO, Strong Jones, do next?” [Solicit answers from the class before providing your own]</p> <p>Answer: Among other things, Jones might:</p> <ol style="list-style-type: none"> 1. Establish the contract file. 2. Brief Mark Smith on his roles and responsibilities, including requirements to protect information on the upcoming acquisition. 3. Assign the PR to a subordinate. 4. Enter the PR number and date of receipt in a tracking system. 	

TOPIC: 6.2.1.2 FUNDING

Ref. Pages 6-12 to 6-13


Objective: When you finish Section 6.2.1.2, the students must be able to describe:

- How funds are committed for obligation.
- The CO's role in verifying the availability of funds.
- Impact of the Anti-Deficiency Act.

Time: 9:20 — 10 Minutes

Method: Roleplay #2 and related Discussion


LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 6-8	<p>a. Ask the two students in the class to continue in the roles of Mark Smith, PM, and Strong Jones, CO.</p> <p>b. Have them read the roleplay aloud to the class.</p>	

Roleplay #2 (CM 6-8)

Jones (the CO): Where is the certifying official's signature? Have funds been appropriated for this procurement?


Smith (the PM): I haven't spoken with the financial officer as yet. The PR is essentially done, except for your review, and I wanted to have you start on the procurement to save time. Sometimes the finance people can be so slow! I assure you that the funds will be available before the solicitation is ready to send out.

 CM 6-7	<p>c. Question: Do you have any problem with Smith's answer? [Solicit answers from the class before providing your own]</p> <p>Answer: Mark Smith is responsible for committing funds for obligation. To commit funds, appropriation data are entered on the PR (block 12). Normally, the finance office then certifies that funds are available for obligation (block 16c). In this case, however, Mark brought the PR to Jones before the finance office had a chance to review it.</p>	
--	---	--

TOPIC: 6.2.1.2 FUNDING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>Strong Jones could proceed with the procurement—as long as funding is certified before the release of the solicitation. Other parts of the solicitation can be assembled while Jones is waiting for the funds to be committed.</p> <p>On the other hand, Jones may not be willing to accept a PR and start work on the procurement without a firm commitment of funds.</p> <p>d. Question: Why are COs so touchy about funding? [Solicit answers from the class before providing your own]</p> <p>Answer: COs may be personally responsible for payment (under the provisions of the Anti-Deficiency Act), if a contract is awarded and there are insufficient funds.</p> <p>e. Stress that Jones will revisit the funding issue after accepting the PR, not only to ensure that funding has been made available, but also to ensure that the right kind and amount of funds are available for the solicitation and, later, for contract award.</p>	

TOPIC: 6.2.1.2 FUNDING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: Can COs contract for requirements that are not firm or not fully funded at the time of award? [Solicit answers from the class before providing your own]</p> <p>Answer: Yes, by:</p> <ul style="list-style-type: none"> • Making the solicitation subject to the availability of funds. • Including an option. • Using indefinite delivery terms and conditions (to be discussed as part of Lesson 7). • Incorporating clauses that provided for multiyear contracting. <p> g. Recap the Question for Section 6.2.1: “Is the PR acceptable as the basis for the procurement, and what are the steps in initiating the procurement?”</p> <p>Answer: As the first step in initiating the procurement, Strong Jones critiqued Mark Smith's Purchase Request for upgrading pollution control equipment, obtained corrections from Mark, checked the availability of funds, and accepted the corrected PR.</p> <p>The CO's next steps are to establish the contract file, update the tracking system, control information about the upcoming acquisition, and assign the PR to a Contract Specialist.</p> <p>h. Ask the Recorder to write this answer on page CM 6-2 of his/her book.</p>	


TOPIC: 6.2.2 MARKET RESEARCH**Ref.** Pages 6-13 to 6-15**Objective:** When you finish Section 6.2.2, your students must be able to:

- Recognize a typical setting for conducting market research and state the related business question.
- Define market research.
- Identify the regulatory requirements for conducting such research.
- Identify types of market data relevant to business decisions.
- List typical sources of data on markets.



Time: 9:30 — 60 Minutes**Method:** Lecture/Discussion and Group Exercise

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting: Strong Jones, the CO, has accepted the PR.</p> <p>b. Present the Basic Business Question: “What facts do you need about the requirement and the market to make good business decisions, and where do you get these facts?”</p> <p>c. Define market research: “the process used for collecting and analyzing information about the entire market available to satisfy minimum agency needs.” The results of market research are used “to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.” FAR 10.001</p> <p>d. Stress that the FAR requires COs to conduct market research. Purposes:</p> <ul style="list-style-type: none"> • Promote competition (FAR 10.002(a)(2)). • Identify commercial products that can meet the need (FAR 11.004(a)). • Meet the Government's needs in a cost effective manner (FAR 11.004(b)). 	




TOPIC: 6.2.2 MARKET RESEARCH (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 6-4	<p>e. Ask the class to read pages 6-13 through 6-15 (Market Research).</p> <p>f. Break students into small groups.</p> <p>g. Using the Smoketown scenario (page CM 6-4), ask the students:</p> <ol style="list-style-type: none"> 1. If you were Mark Smith and Strong Jones, what questions would you ask about the market for air pollution control equipment? Ask the students to write as many kinds as they can imagine. Provide this example to get them started: “For instance, Jones might ask “who makes pollution control equipment?” 2. Who has the answers to questions on this market? Ask the students to write as many potential sources of information on the market for air pollution control equipment as they can imagine. Provide this example to get them started: “For instance, one source of information on air pollution control would be buyers for electric power companies like VEPCO and PEPCO.” <p>h. Have each group prepare its answers to the questions.</p>	



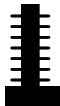

TOPIC: 6.2.2 MARKET RESEARCH (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="289 342 370 422"></div> <div data-bbox="289 522 370 602"></div>	<p>i. Question: If you were Mark Smith and Strong Jones, what questions would you ask about the market for air pollution control equipment?</p> <p>Rotate from group to group, asking each group to supply a question. Write their questions on a flipchart. Continue until all the groups have exhausted their supply of questions.</p> <p>Potential questions about the market :</p> <ul style="list-style-type: none"> • Is acceptable equipment available in the market? • Is the industry experiencing any backlogs? What are current delivery lead times? • What prices are currently being paid? What are the trends in supply and demand? (E.g., impact on demand of new EPA standards.) • What are the key determinants of price for this equipment? • What terms and conditions typically apply to buying pollution-control equipment—e.g., warranties, contract types, etc.? • What do we know about the expected life, reliability, and maintainability of commercially available equipment? • Has the Government acquired such equipment before? If so, at what price? What were the lead times? Were there any problems with the acquisition and subsequent performance by the contractor? • Are there qualified contractors to install? • Can time requirements be met? • How do commercial specs match up with the PR? 	

TOPIC: 6.2.2 MARKET RESEARCH (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>j. Question: “Who has the answers to questions on the market for air pollution control equipment?”</p>	
	<p>Rotating from group to group, solicit and write their answers on a flipchart.</p> <p>Potential answers:</p> <ul style="list-style-type: none"> • The requiring activity and other in-house technical experts. • Acquisition histories available in your contracting activity (e.g., the contract for the original equipment). • COs in other contracting activities and agencies (e.g., GSA and DoD operate powerplants). • Industry buyers of the pollution control equipment. • Independent Governmental or private sector testing associations. • Environmental associations and publications. • Potential suppliers (available from their catalogs, marketing literature, sources sought synopses, and surveys). • Trade and professional associations. 	
	<p>k. Recap of the Question for Section 6.2.2: “What facts do you need about the requirement and the market to make good business decisions, and where do you get these facts?”</p> <p>Answer: We identified the facts that Strong Jones needs to make good business decisions on the Smokestack upgrade. We identified potential sources of those facts. Based on our advice, Strong Jones researched the market for upgrades and prepared a market report.</p>	
CM 6-9 thru 6-12	<p>l. Refer the class to pages CM 6-9 through CM 6-12 and provide them time to read the report. Tell them that every fact in that report will have a bearing on Strong Jone's decisions in Lessons 6, 7, 8, and 9.</p>	

TOPIC: 6.2.2 MARKET RESEARCH (CON'T)**MARKET REPORT**

Table 1. A Typical Smokestack Upgrade Kit	
	<p>One Rebuilt Filter</p> <p>The contractors remove the existing filters and rebuild them, using newly developed filtration materials and technologies.</p>
	<p>Three Replacement Brackets</p> <p>These brackets are bolted to the interior walls of the smokestack. Rebuilt filters generally weigh 2-3 times more than the original. New brackets are necessary to support the extra weight.</p>
	<p>One Replacement Pump</p> <p>This pump replaces the Scrubber's existing pump. The new pumps handle much higher pressures than previous pumps—creating a finer, more effective spray.</p>
	<p>One Chemical Tank</p> <p>This tank connects to the "<u>Water Pipe In</u>" of the Scrubber. The Scrubber's pump mixes water with chemicals from the tank and sprays the mixture into the Scrubber's chamber. The chemicals greatly boost the Scrubber's effectiveness in "precipitating" (i.e., washing) pollutants out of the smoke.</p>

I. Making and Installing the Upgrade Kit: To supply an upgrade, the company must:

- Buy chemicals, parts for the Filter, and other supplies.
- Extract the existing Filter, ship it to its plant, and rebuild it.
- Design and make the Replacement Pump, based on (1) the dimensions of the existing Scrubber chamber and (2) existing plumbing and electrical connections.
- Mix the chemicals and fill the Tank.
- Transport the finished pieces to the site.
- Install the Replacement Pump, Chemical Tank, Replacement Brackets, and Rebuilt Filter.

Installation accounts for 20% of the cost of the upgrade.

TOPIC: 6.2.2 MARKET RESEARCH (CON'T)

II. Schedule

The upgrade packages are typically manufactured and installed over a six to nine month period per smokestack. Since Mark Smith, the Program Manager, needs to keep the test facility in full operation during the upgrading, he plans on shutting down only one smokestack at a time. This will require a period of performance of at least 18 months.

III. Potential Suppliers

Five suppliers produce upgrades that are advertised as meeting the new EPA standards.

Table 2. Suppliers Of Smokestack Upgrade Kits		
Name		Where Upgrade Kits Are Manufactured
A.	Cleanco	Johnstown, Pa. 15906*
B.	Shackelford	East St. Louis, Ill. 62206*
C.	Scrubbco	East St. Louis, Ill. 62208*
D.	Blast	Detroit, MI 48225*
E.	Snuff-It	Vienna, VA 22180

*Labor Surplus Areas.

Note that Company D, Blast, is the only firm that satisfies the Size Standards for classification as a Small Business. None are 8(a) suppliers. Also note that four companies are in Labor Surplus Areas.

In addition, two companies—WASH-OUT and DIRTCO—claim that their upgrade kits reduce total emissions by as much as 30%. However, these two companies do not represent their upgrade kits as capable of meeting the new EPA limits for each and every pollutant.

TOPIC: 6.2.2 MARKET RESEARCH (CON'T)

IV. Distinguishing Characteristics of the Upgrade Packages

1. Each company has developed its own secret recipe for the contents of the Chemical Tank connected to the Scrubber.
2. Each company uses its own proprietary design for the filter.
3. The pumps being marketed by the firms differ, among other things, in terms of the maximum water pressure that each can accommodate.

Table 3. Maximum Water Pressure By Pump (In Pounds Per Square Inch—PSI)		
Name		PSI Rating
A.	Cleanco	180
B.	Shackelford	177
C.	Scrubco	179
D.	Blast	175
E.	Snuff-It	166

V. Market Prices:

Mark Smith, program manager for this acquisition, provided an independent cost estimate of \$3 million per smokestack. We were able to verify the reasonableness of this cost estimate from reports on upgrades acquired by private and public (State and local) buyers. Over the past year, prices have ranged from \$2,400,000 to \$2,900,000 per smokestack. Variations in price appear to largely be a function of:

- The physical shape and dimensions of the smokestack and scrubber chamber.
- Capacity, effectiveness, and condition of the existing filter.
- Time (all other things being equal, later buys have tended on average to be priced slightly higher than earlier buys).

VI. Trends in Supply and Demand

As indicated above, we know of only five companies who allege that their upgrade packages can meet the new EPA requirements. Since the new EPA standards were announced, demand has soared. It appears that buyers for virtually every power plant in the U.S. and Canada are actively expressing interest in the upgrades. There have already been spot shortages of several chemicals and subassemblies required for the upgrades. Shortages of skilled labor have also been reported.

TOPIC: 6.2.2 MARKET RESEARCH (CON'T)

VII. Commercial Terms:

Reportedly, most of the sales have been on a firm fixed price basis. Most of the offerors advertise maintenance and repair services as separately priced options. Chemicals are supplied under indefinite delivery, “price per liter” arrangements.

Given the high upfront costs for manufacturing the equipment and the fact that any one smokestack may require six months of work, offerors have typically required private sector buyers to make down payments at the time of contract award. These down payments have been as high as 50% of the total price. In view of trends in supply and demand (see above), as often as not, offerors have received the down payments.

VIII. Concerns About Quality

The upgrade packages are relatively new to the market and vary significantly from manufacturer to manufacturer. Hence, the track record of the upgrades is still largely unknown.

For example, there are no good data on such aspects of performance as system life, reliability, or maintainability. And, while as indicated above, five firms claim that their upgrade packages satisfy the new EPA standards, these claims are largely based on experimental prototypes.

Shortages of skilled labor may also lead some companies to employ relatively inexperienced and undertrained labor. This is of particular concern when it comes to installing the upgrade at the plant site. A faulty job of installation could allow pollutants to bypass the scrubbers and filters.


IX. Acquisition History

The Smoketown plant's current scrubbers and filters were installed ten years ago by SAVE—EARTH, Inc. Five years ago, SAVE—EARTH, Inc., was acquired in a leveraged buyout by CLEANCO. CLEANCO has, over this period, competed for and repeatedly been awarded a contract for servicing and maintaining the scrubbers and filters. In addition, two years ago, CLEANCO was awarded a contract for a minor upgrading of the filters. Mark Smith, the Project Manager, has reported great satisfaction with CLEANCO'S work and—as COTR for these various contracts—has had a good rapport with CLEANCO's staff.

TOPIC: 6.3.1 ANALYSIS OF REQUIREMENTS**Ref.** Page 6-16**Objective:** When you finish Section 6.3.1, your students must be able to:

- Recognize a typical setting for this function.
- State the related business question.
- List the three principal steps in performing the function.

Time: (Break for 20 Minutes first) 10:50 — 5 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes	
	a. Show VG 6-5: Analysis of Requirement.		
<div>Determination of Need</div>	<div>Initiating the Procurement</div>	<div>Analysis of Requirement</div> <div>Analysis of Requirements</div> <div>Specifications</div> <div>Statements of Work</div> <div>Services</div>	<div>Sourcing</div>

VG 6-5

<p>b. Present the Setting:</p> <p>“You have amassed facts about the requirement and the market. You are ready to begin applying your market knowledge.”</p> <p>c. Present the Question:</p> <p>“How can the Government's requirements be stated so as to yield the best market response?”</p> <p>d. List the Steps:</p> <ol style="list-style-type: none"> 1. Review Specifications. 2. Review the overall Statement of Work and related aspects of the requirement. 3. Determine whether requisitioned services (if any) may properly be acquired and under what conditions. 	
--	--

TOPIC: 6.3.1.1 SPECIFICATIONS

Ref. Pages 6-17 to 6-19

Objective: When you finish Section 6.3.1.1, your students must be able to:

- List and define 3 types of specifications.
- List several criteria for reviewing a proposed specification.



Time: 10:55 — 25 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define Specification:</p> <p>“a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. Specifications shall state only the Government's actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.” FAR 10.001</p> <p>b. Present the three types of specifications.</p> <p>I. Functional</p> <ul style="list-style-type: none">• Describes the deliverable in terms of general performance goals and intended use.• The contractor accepts general responsibility for achievement of the performance goals.• Does not specify any particular approach or type of product• Is the least restrictive type of specification <p>Example: A requirement for a system to purify water which leaves the door open to (1) chemicals, (2) filters, (3) distillation, (4) genetically engineered bacteria, and (5) any and all combinations of these approaches—as long as the proposed approach satisfies the Government's goals for purity, gallons per hour, and system life.</p>	

TOPIC: 6.3.1.1 SPECIFICATIONS (CON'T)


Ref.	Steps In Presenting The Topic	Instructor Notes
  CM 6-13	<p>II. Performance</p> <ul style="list-style-type: none"> • Describes the deliverable in terms of desired operational characteristics. • The contractor accepts general responsibility for achievement of the performance requirements. • More restrictive than functional, in terms of limiting alternatives and defining separate performance standards for each such alternative. <p>Example: A requirement for a water filter which is cast in terms of operational characteristics (e.g., measures and levels of purity, gallons per hour, filter life, electrical rating, maximum voltage requirements, etc.).</p> <p>III. Design:</p> <ul style="list-style-type: none"> • Establishes precise measurements, tolerances, materials, in process and finished product tests, quality control, inspection requirements, and other such specifics . • The Government assumes liability for the design and related omissions, errors, and deficiencies in the specifications and drawings. • For that reason—the least desirable type of specification. <p>Example: A requirement for a water filter built to Government furnished blueprints and material requirements.</p>	
	<p>c. Point out that specifications for a complex procurement are often a composite.</p>	
	<p>d. Show VG 6-6. This is an interactive view-graph that lists examples of different types of specifications. Ask the students to tell you whether the specification is a functional, performance or design specification. Use a marker to mark an "X" in the appropriate box. The answers are provided on the next page.</p>	

TOPIC: 6.3.1.1 SPECIFICATIONS (CON'T)

SPECIFICATIONS

1. Bathroom must include bathtub and separate shower (see blueprints) [DESIGN]
2. Provide gasoline powered generator capable of providing ____ watts at ____ amps of electricity for 24 hours on a single 30 gallon tank of fuel. [PERFORMANCE]
3. Provide a communication system between construction site and program office [FUNCTIONAL]
4. 200 doz. cookies must be IAW Fed Spec XYZ [DESIGN]
5. Develop a system for protecting the nose cone during reentry [FUNCTIONAL]
6. Provide 300 tons of steel capable of resisting high temperature to 200° F without break-down [PERFORMANCE]
7. "Janitorial Work" includes dusting, vacuuming, and emptying the trash
☞ [PERFORMANCE OR FUNCTIONAL]

VG 6-6/CM 6-13

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Question: In the Smoketown scenario, what type of specification would you recommend? [Solicit answers from the class before providing your own]</p> <p>Answer: For the most part, a performance specification. The upgrade kits are commercially available, and Smith and Jones need to be able to hold the contractor responsible for meeting the EPA standards.</p>	
CM 6-10 and 6-11	<p>f. Tell the class to reread the Market Report, Sections III (Potential Suppliers) and IV (Distinguishing Characteristics of the Upgrade Packages).</p>	

TOPIC: 6.3.1.1 SPECIFICATIONS (CON'T)**EXCERPTS FROM THE MARKET REPORT (from pages CM 6-10 and 6-11)****III. Potential Suppliers**

Five suppliers produce upgrades that are advertised as meeting the new EPA standards.

Table 2. Suppliers Of Smokestack Upgrade Kits		
Name		Where Upgrade Kits Are Manufactured
A.	Cleanco	Johnstown, Pa. 15906*
B.	Shackelford	East St. Louis, Ill. 62206*
C.	Scrubbco	East St. Louis, Ill. 62208*
D.	Blast	Detroit, MI 48225*
E.	Snuff-It	Vienna, VA 22180

*Labor Surplus Areas.

* * * * *



In addition, two companies—WASH-OUT and DIRTCO—claim that their upgrade kits reduce total emissions by as much as 30%. However, these two companies do not represent their upgrade kits as capable of meeting the new EPA limits for each and every pollutant.

IV. Distinguishing Characteristics of the Upgrade Packages

* * * * *

Table 3. Maximum Water Pressure By Pump (In Pounds Per Square Inch—PSI)		
Name		PSI Rating
A.	Cleanco	180
B.	Shackelford	177
C.	Scrubbco	179
D.	Blast	175
E.	Snuff-It	166


TOPIC: 6.3.1.1 SPECIFICATIONS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. Question: Suppose Mark Smith said, “Let's keep the requirement nice and simple—the upgrade must reduce total daily emissions by 20%.” What is wrong with phrasing the requirement that way?</p> <p>Answer: Phrase the requirement that loosely, and two other companies—WASH-OUT and DIRTCO— would be able to compete for the award. If they win, total emissions might be reduced by 30%—but Mark Smith would still be in trouble with EPA.</p>	
	<p>h. Question: Suppose Mark Smith said, “As one of the performance characteristics, let's require pumps with a PSI rating of 180 or higher.” What is wrong with phrasing the requirement that way?</p> <p>Answer: Phrase the requirement that tightly, and only CLEANCO would be able to compete for the award.</p> <p>i. In short, when reviewing Mark Smith's specification, Jones should guard against:</p> <ul style="list-style-type: none"> • Any words that would disqualify upgrade kits that can meet the EPA standards. • Any imprecision or ambiguity in language that describes the desired performance characteristics. • Any goldplating—performance characteristics over and above what is necessary to meet the new EPA standards. • Nonessential or obsolete requirements. • Words that would allow upgrade kits to be considered "acceptable" which cannot meet the new EPA standards. 	

TOPIC: 6.3.1.2 STATEMENT OF WORK**Ref.** Pages 6-20 to 6-21**Objective:** When you finish Section 6.3.1.2, your students must be able to:

- Define SOW.
- Identify elements of an SOW.

Time: 11:20 — 10 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 6-14	a. Define Statement of Work: Describes the work to be performed and incorporates any applicable specifications.	
	b. Show VG 6-7. This is an interactive viewgraph that lists several items that may or may not be included in a SOW. Ask students to point out which of those items will be included in the SOW. The correct answers are indicated by an "*". (With respect to the Uniform Contract Format, these items appear in Part 1, Section C). Requiring managers often furnish information on items 1, 4, and 7 with the PR. They may regard items 1, 4, and 7 as part of their SOW. However, COs incorporate these items in sections of the solicitation other than that reserved for the SOW (i.e., Section C of the Uniform Contract Format). Packing requirements go to Section D; delivery requirements to Section F, and Inspection criteria to Section E.	

STATEMENT OF WORK

1. Packing, packaging, and marking requirements
2. Names of contracting officials
3. Contract clauses and solicitation provisions
4. Delivery schedules or period of performance
5. **General scope of work/objectives** "*"
6. **Reporting requirements** "*"
7. Inspection and acceptance criteria
8. **Contractor tasks** "*"
 9. Small disadvantaged business requirements
 10. **Specifications for each deliverable** "*"

VG 6-7/CM 6-14

TOPIC: 6.3.1.3 SERVICES

Ref. Pages 6-22 to 6-24

Objective: When you finish Section 6.3.1.3, your students must be able to define and summarize policies on:

- Personal services.
- “Advisory and assistance” services.
- “Wage Determinations”

Time: 11:30 — 15 Minutes

Method: Lecture/Discussion




LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define Service Contracts.</p> <p>Contracts awarded for the performance of an identifiable task, rather than for furnishing an end item of supply.</p> <p>b. Stress that there are statutory and regulatory controls on the acquisition of 2 types of services:</p> <p>1. Acquisition of personal services</p> <p>Explain that a personal service is one in which the contractor personnel appear to be, or are treated as, Government personnel. Personal service contracts are generally not allowed.</p> <p>2. Acquisition of advisory and assistance services</p> <p>Examples of such services:</p> <ul style="list-style-type: none">• Individual experts and consultants.• Studies, analyses, and evaluations.• Management and professional support services.• Engineering and technical services.	

TOPIC: 6.3.1.3 SERVICES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. Stress that Part 37 of the FAR establishes tight controls on the acquisition of advisory and assistance services.</p> <p>For example, §37.202(c) states that such advisory and assistance services shall not be—</p> <ol style="list-style-type: none"> (1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials; (2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures; (3) Contracted for on a preferential basis to former Government employees; (4) Used under any circumstances specifically to aid in influencing or enacting legislation; (5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency. <p>d. Tell the class: Even when you have authority to acquire the requested service, you may have other hurdles to jump before you can acquire the service. For instance, the Service Contract Act, where applicable, requires COs to request “Wage determinations” from the Dept. of Labor prior to soliciting offers.</p> <p>e. Define “Wage Determination” and state the purpose of such determinations.</p> <p>Wage determinations identify the minimum monetary wages and fringe benefits that contractors must pay to “service employees” for performing work under a Federal contract. CO's attach the Wage Determination to the solicitation. This puts would-be offerors on notice that their prices should reflect the wage rates—since those wage rates will be enforced by the Government if the offeror is awarded the contract.</p> <p>Also note that the Act exempts some types of employees, such as “professional employees” from the Wage Determinations.</p>	


TOPIC: 6.3.1.3 SERVICES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: In the Smoketown case, would this be considered a service contract?</p>	
	<p>Answer: This is not a service type contract--installation is ancillary to the purchase of the commercially available supplies.</p>	
	<p>For the instructor's eyes only: In the Smoketown scenario, Strong Jones might need to obtain a wage determination under Davis-Bacon. FAR 22.402(b) states that Davis Bacon Act applies to “nonconstruction contracts involving some construction work” if the construction work—</p>	
	<ol style="list-style-type: none"> 1. Is to be performed on a public building or public work; 2. Would exceed \$2,000; and 3. Is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract. 	
	<p>g. Recap of the Question for Section 6.3: “How can the Government's requirements be stated so as to yield the best market response?”</p>	
	<p>Answers: Strong Jones:</p> <ol style="list-style-type: none"> 1. Decided to use a performance specification. 2. Reviewed Mark Smith's language for the proposed specifications, in terms of writing the specification tight enough to exclude companies like “WASH-OUT ” but not so tight as to virtually hand the award to CLEANCO . 3. Determined that Mark Smith's requirement would be classified as a supply, rather than as a service, contract. 	
	<p>h. Ask the Recorder to write this answer on page CM 6-2 of his/her book.</p>	

TOPIC: 6.4.1 EXTENT OF COMPETITION**Ref.** Pages 6-25 and 6-26**Objective:** When you finish Section 6.4.1, your students must be able to:

- Recognize a typical setting for determining the extent of competition.
- State the related business question.
- List factors in determining the extent of competition.

Time: (Hour Break for Lunch first) 12:45 — 5 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 6-8: Sourcing. Focus on the first function—"Extent of Competition"	

Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing
			Extent of Competition Required Sources Set-Asides 8(a) Procurements Competition Requirements Unsolicited Proposals Selection Factors Lease vs. Purchase Price Related Factors Technical Evaluation Factors Procurement Method Method of Procurement Procurement Planning Procurement Plans

VG 6-8


TOPIC: 6.4.1 EXTENT OF COMPETITION (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Present the Setting:</p> <p>“The specification and Statement of Work are complete.”</p> <p>c. Present the Question:</p> <p>“Who should you allow to compete for the procurement?”</p> <p>d. List Factors in determining the extent of competition:</p> <ol style="list-style-type: none">1. Requirements in law or regulation to use specific suppliers.2. Requirements to set aside procurements for small business.3. Availability of suppliers under the 8(a) program.4. Requirements for full and open competition.5. The validity and suitability of an unsolicited proposal.	

TOPIC: 6.4.1.1 REQUIRED SOURCES**Ref.** Pages 6-26 to 6-28**Objective:** When you finish Section 6.4.1.1, your students must be able to:

- Identify typical required sources.
- Define “bidder mailing list.”

Time: 12:50 — 15 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define “required source” and provide examples of such sources. Note that most of the required sources provide commercially available, “common-use” products and services.</p> <ul style="list-style-type: none"> √ Agency Inventories. √ Excess Personal Property — FAR §8.1 √ Federal Prison Industries, Inc. — FAR §8.6 √ Products from the Blind & Other Severely Handicapped — FAR §8.7. √ GSA, DLA, and VA stocks. √ Federal Supply Schedules — FAR §8.4. <p>b. Ask the students to open their books to pages 6-27 and 6-28 and scan Exhibits 6-14 and 6-15.</p> <p>c. Define “priority order” .</p> <p>d. Note that a separate ordering procedure is prescribed for each source in FAR Part 8.</p>	<p>Note—tell the students that Exhibit 6-14 (page 6-27) is out of date—per FAC 90-4, the Federal Prison Industries, Inc., is not a “required” source for services.</p>


TOPIC: 6.4.1.1 REQUIRED SOURCES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. State that special acquisition policies apply to requirements for the following deliverables:</p> <ul style="list-style-type: none"> √ Jewel bearings— FAR §8.2. √ Utilities — FAR §8.3 √ Printing — FAR §8.8 √ ADP — FAR §39 and the FIRMR. √ Leased motor vehicles — FAR §8.11 √ Strategic materials — 41 CFR 101-14.2 √ Helium — 30 CFR Parts 601 and 602 <p>f. State that CO's may turn to the open market only if a required source cannot meet the need.</p> <p>FAR provisions for each required source differ in both procedure and substance when it comes to determining whether the source can or cannot meet the need.</p> <p>Some typical factors (among others):</p> <ul style="list-style-type: none"> • Features of the product (can the product of a required source in fact meet the need)? • Urgency • Quantities required, if, for instance, the quantity you need exceeds the maximum ordering limitation of the source. • Price. <p>g. Stress that, if a required source cannot meet the need, the CO builds or maintains a “mailing list” of potential offerors.</p> <p>Transition: Inform the students that there is no required source for the Smokestack upgrade kits in our Smoketown Scenario.</p>	

TOPIC: 6.4.1.2 SET-ASIDES**Ref.** Pages 6-29 to 6-32**Objective:** When you finish Section 6.4.1.2, your students must be able to:

- Define “set-aside.”
- Identify types of set-asides and the order of precedence.
- Describe the “rule of two”

Time: 1:05 — 15 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define “Set-Aside.”</p> <p>An acquisition reserved in part or in whole for small businesses and/or businesses in labor surplus areas.</p> <p>b. State that there are several different types of set-asides. To identify the set-aside, if any, that best matches your requirement, the CO has to take into account the mandated “pecking order.”</p>	
 CM 6-15	<p>c. Show VG 6-9: This is an interactive view-graph that lists the five set-aside programs out of order. Ask the students to prioritize them and number them accordingly on the viewgraph.</p>	

☞ SET-ASIDE PRIORITIES

- _4_ Partial set-aside for small businesses
- _5_ Total labor surplus area set-aside for all concerns located in labor surplus areas
- _2_ Total set-aside for small businesses
- _1_ Total set-aside for small businesses located in labor surplus areas
- _3_ Partial set-aside for small businesses located in labor surplus areas

VG 6-9/CM 6-15

TOPIC: 6.4.1.2 SET-ASIDES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 6-10	<p>d. Present the decision-rule for determining which set-aside applies, if any.</p> <p>A reasonable expectation that:</p> <ul style="list-style-type: none"> • Offers will be obtained from at least two responsible sources, and that • Awards will be at fair market prices 	
	<p>e. Tell the class to read the Market Report, Section III (Potential Suppliers).</p>	

EXCERPTS FROM THE MARKET REPORT (CM 6-10)

III. Potential Suppliers

Five suppliers produce upgrades that are advertised as meeting the new EPA standards.

Table 2. Suppliers Of Smokestack Upgrade Kits		
Name		Where Upgrade Kits Are Manufactured
A.	Cleanco	Johnstown, Pa. 15906*
B.	Shackelford	East St. Louis, Ill. 62206*
C.	Scrubbco	East St. Louis, Ill. 62208*
D.	Blast	Detroit, MI 48225*
E.	Snuff-It	Vienna, VA 22180

***Labor Surplus Areas.**

Note that Company D, Blast, is the only firm that satisfies the Size Standards for classification as a Small Business. None are 8(a) suppliers. Also note that four companies are in Labor Surplus Areas.

<div style="border: 1px solid black; padding: 5px; width: 40px; height: 40px; margin: 0 auto;"> ? </div>	<p>f. Question: In the Smoketown case, which type of set-aside, if any, applies? [Solicit answers from the class before providing your own]</p> <p>Answer: Total labor surplus area set-aside for all concerns in such areas.</p>
---	---

TOPIC: 6.4.1.3 8(a) PROCUREMENTS

Ref. Page 6-32

Objective: When you finish Section 6.4.1.3, your students must be able to:

- Define the purpose of the 8(a) program.
- Describe when and why the 8(a) program might be used to meet a requirement for a supply or service.

Time: 1:20 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Describe the 8(a) program.</p> <p>Explain that §8(a) of the SBA act authorizes SBA to serve as a prime contractor in meeting the requirements of Federal agencies. SBA in turn sub-contracts with small businesses that are at least 51% owned by one or more persons who are both socially and economically disadvantaged. The program is intended to provide such firms an opportunity to develop into experienced, strong competitors for future contracts after they "graduate" from the 8(a) program.</p> <p>b. To take best advantage of the 8(a) program—</p> <ul style="list-style-type: none"> • Research 8(a) firms that have the potential of meeting your organization's needs. • Identify the best such 8(a) firms. • Be proactive in seeking out and utilizing those firms. <p>Transition: Unfortunately, no 8(a) firms can meet our Smokestack upgrade requirement.</p>	

TOPIC: 6.4.1.4 COMPETITION REQUIREMENTS & 6.4.1.5 UNSOLICITED SOURCES

Ref. Pages 6-33 to 6-35



Objective: When you finish Section 6.4.1.4, your students must be able to:

- Define “Full and Open Competition” (FAOC).
- Describe when “Other Than Full and Open Competition” is permitted.
- Describe several of the factors in considering unsolicited proposals.
- Define “FAOC after the exclusion of sources”.

Time: 1:30 — 20 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
  CM 6-16	<p>a. Define “Full and Open Competition”.</p> <p>All responsible sources are permitted to compete.</p> <p>b. List exceptions to the requirement for FAOC—</p> <ul style="list-style-type: none"> • Small purchases. • 8(a) acquisitions—although there are requirements for competition <u>between</u> 8(a) firms for some acquisitions. • Seven statutory exceptions. <p>c. Show VG 6-10: This is an interactive view-graph that lists several phrases that either allow for other than FAOC or do not allow for other than FAOC. Have students identify which statutory authority would allow for other than FAOC.</p> <p>The correct answers are indicated by an "*".</p>	

OTHER THAN FAOC

1. Public interest "*"
2. Unusual and compelling urgency "*"
3. Only one responsible source and no other supplies/services will satisfy agency requirements "*"
4. Only one bid submitted
5. National security "*"
6. Price reasonableness cannot be determined VG 6-10/CM 6-16

**TOPIC: 6.4.1.4 COMPETITION REQUIREMENTS & 6.4.1.5
UNSOLICITED SOURCES (CON'T)**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Refer students to Exhibit 6-18. Read aloud the first exception—"Only one responsible source and no other supplies or services will satisfy agency requirements" Draw their attention to the last example for this exception:</p> <p style="padding-left: 40px;">"The contract is in response to an unsolicited research proposal."</p> <p>e. Define unsolicited proposal:</p> <p style="padding-left: 40px;">A written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request.</p> <p>f. Warn students that, if presented with an alleged "unsolicited proposal," do not assume that you can make a noncompetitive award.</p> <p style="padding-left: 40px;">For instance, FAR §15.507 forbids a noncompetitive award if the unsolicited deliverable:</p> <ul style="list-style-type: none"> • Closely resembles a requirement for a pending competitive acquisition. • Is not innovative and unique. • Is available without restriction from another source. <p>g. Describe FAOC after the Exclusion of Sources.</p> <p style="padding-left: 40px;">Even when FAOC is required, the FAR occasionally permits COs to exclude some sources from competing. The most common example: set-asides.</p>	

**TOPIC: 6.4.1.4 COMPETITION REQUIREMENTS & 6.4.1.5
UNSOLICITED SOURCES (CON'T)**

h. Recap of the Question for Section 6.4.1:

“Who should you allow to compete for the procurement?”

Answer: We have decided to limit competition to business concerns in labor surplus areas.



i. Ask the Recorder to write this answer on page CM 6-3 of his/her book.

TOPIC: 6.4.2 SELECTION FACTORS

Ref. Pages 6-36 to 6-40



Objective: When you finish Section 6.4.2, your students must be able to:

- Recognize a typical setting for determining the evaluation factors for an acquisition.
- State the related business question.
- List 3 potential types of evaluation factors.
- Define “price-related” factors and their purpose.
- List typical price-related factors.
- Describe technical evaluation factors and their purposes.



Time: (20 minute break before) 2:10 — 45 Minutes

Method: Lecture/Discussion and Group Exercise

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“Our acquisition will be made on the basis of full and open competition after the exclusion of sources outside of labor surplus areas.”</p> <p>b. Present the Question:</p> <p>“What factors should you apply in selecting a competing offeror for award?”</p> <p>c. List potential evaluation factors:</p> <ol style="list-style-type: none"> 1. Lease vs. Purchase. 2. Price-Related. 3. Technical. <p>d. Stress that all evaluation factors must be stated in the solicitation—section M of the Uniform Contract Format.</p>	
		


TOPIC: 6.4.2 SELECTION FACTORS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Question: In the Smoketown case, should we lease the Smokestack upgrades, or should we buy them? [Solicit answers from the class before providing your own]</p> <p>Answer: When acquiring equipment, this is the first issue in sourcing the requirement. However, we also have the option of letting the market decide the question for us. That is, we can ask the vendors to submit offers to sell the equipment to us and also offers to lease it. The Government then can pick the offer that entails the lowest total cost over the useful life of the equipment.</p> <p>In the Smoketown scenario, however, the upgrades are definitely something to buy—not lease—because, as upgraded, the equipment is a more or less permanent fixture.</p>	
	<p>f. Tell the students that the next issue concerns the evaluation factors that Strong Jones should include in the solicitation as the basis for selecting an offeror.</p> <p>g. Define price-related factors and state their purpose:</p> <p>Price-related factors are used to adjust the "sticker price" of an offer to reflect additional costs of acquiring and owning the offered deliverable. By using price-related factors, COs can identify and select that offer which would result in the lowest total cost to the Government over the deliverable's useful life.</p> <p>h. Present examples of price-related factors:</p> <p>Energy efficiency—the Government may take into account the fact that Brand A's electric bill would run \$500 more a year than Brand B's. In that case, the Government may buy Brand B even if Brand A's sticker price is \$200 less.</p> <p>For other commonly used price-related factors, refer the students to Exhibit 6-19 on page 6-38 of the text reference.</p>	

TOPIC: 6.4.2 SELECTION FACTORS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. Define technical factors and state their purpose:</p> <p>Any evaluation factors that are not price-related.</p> <p>Technical factors are used to minimize the business and technical risks inherent in a contract. At times, such risks outweigh price as a factor in making award.</p> <p>Technical factors give an edge to those offerors which have the best potential for successfully completing the work.</p> <p>j. Present the two basic issues in reviewing proposed technical factors:</p> <ul style="list-style-type: none"> • Are the factors reliable (i.e., would comparable evaluators apply them consistently?) • Are the factors valid (i.e., would a firm ranking highest on the factors in fact have the highest probability of successfully performing the work?) <p>k. Present examples of technical factors:</p> <p>Which brain surgeon would you rather hire—the surgeon who offers a cut rate price or the surgeon whose patients have had the highest survival rate? In this example, patient survival rates represent a technical evaluation factor.</p> <p>See Exhibit 6-20 on page 6-39 for examples of technical evaluation factors.</p> <p>l. Present two ways of applying technical factors:</p> <ul style="list-style-type: none"> • On a “go/no-go (i.e., pass/fail) basis.” • To rank proposals. 	

TOPIC: 6.4.2 SELECTION FACTORS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 6-12	<p>m. Distinguish acquisitions based on “lowest price” from acquisitions based on “greatest value.”</p> <ul style="list-style-type: none"> • When technical factors are used only on a “go/no-go basis” to identify technically acceptable offers, then award is based on “lowest price.” • When technical factors are used to rank proposals, then award is based on “greatest value” — in which case, the selection official—consistent with the solicitation's evaluation factors and method of award provisions—weighs the technical merits of each proposal against its price. When merited by its technical superiority, selection officials can select an offer for award even if its price is higher than that of other offers in the competitive range. <p>n. Ask the students to read pages 6-37 to 6-40 in the text/reference. Also tell the class to read the Market Report, Sections VII (Commercial Terms) and VIII (Concerns About Quality).</p>	

EXCERPTS FROM THE MARKET REPORT (CM 6-12)

VII. Commercial Terms:

Reportedly, most of the sales have been on a firm fixed price basis. Most of the offerors advertise maintenance and repair services as separately priced options. Chemicals are supplied under indefinite delivery, “price per liter” arrangements.

* * * * *

VIII. Concerns About Quality

The upgrade packages are relatively new to the market and vary significantly from manufacturer to manufacturer. Hence, the track record of the upgrades is still largely unknown.

For example, there are no good data on such aspects of performance as system life, reliability, or maintainability. And, while as indicated above, five firms claim that their upgrade packages satisfy the new EPA standards, these claims are largely based on experimental prototypes.

Shortages of skilled labor may also lead some companies to employ relatively inexperienced and undertrained labor. This is of particular concern when it comes to installing the upgrade at the plant site. A faulty job of installation could allow pollutants to bypass the scrubbers and filters.

TOPIC: 6.4.2 SELECTION FACTORS (CON'T)


Ref.	Steps In Presenting The Topic	Instructor Notes
	o. Show VG 6-11 Evaluation Factors (CM 6-17)	

EVALUATION FACTORS	
Price Related	Technical
<ol style="list-style-type: none"> 1. Expected Life 2. Technical approach 3. Installation Capability 4. Operating costs 5. Scheduling of work 6. Experience 7. Qualifications of Key Personnel 8. Mean time between failures 9. Maintenance and Repair 10. Buy American Act 	


VG 6-11/CM 6-17

<p>p. Break students into groups. Task them to:</p> <ol style="list-style-type: none"> 1. Identify price-related factors (by entering X's in the Price Related column). 2. Identify technical factors (by entering X's in the Technical Evaluation column). 3. Identify factors that Strong Jones, the CO, should use in buying the Smokestack upgrade kits. Invite the class to brainstorm and consider factors over and above those on pages CM 6-17. 4. Decide whether to acquire the upgrade kits on the basis of “lowest price” or “greatest value.” 	
---	--

TOPIC: 6.4.2 SELECTION FACTORS (CON'T)



Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>q. After reassembling the class, go through the list of factors one by one. For each factor, ask a different group to report:</p> <ol style="list-style-type: none"> Whether they classified the factor as price-related or technical. Whether or not the group would recommend the factor to Strong Jones in buying Smokestack up-grade kits. 	
	<p>Refer the students to their copy of VG 6-11 on page CM 6-17. Instruct the students to circle each factor that the class recommends for acquiring the Smoketown upgrades.</p>	

EVALUATION FACTORS

	Price Related	Technical
1. Expected Life	X	
<p><u>Instructor notes:</u> What if FIRM A's filter and pump generally last 5 years, but FIRM B's filter and pump on average lasts 10 years before needing to be replaced. If FIRM A's sticker price is the same as FIRM B's, whose equipment would you buy? Should “life expectancy” influence our view of the two company's sticker prices?</p>		
		
2. Technical approach		X
<p><u>Instructor notes:</u> Can FIRM A demonstrate that its technical approach to pollution control has a higher probability of meeting the EPA standards than the approaches of its rivals? Should this be a factor in making the selection?</p>		
3. Installation capability		X
<p><u>Instructor notes:</u> The tighter the fit between the filter and the smokestack, the more effective the filtration. If would-be offerors differ in their ability to install filters, should this be a factor in making the selection?</p>		

4. Operating costs X |
Instructor notes: Every month, the Chemical Tank must be refilled. Suppose the monthly cost of FIRM A's chemicals is \$5,000, but the monthly cost of FIRM B's chemicals is \$35,000. If FIRM A's sticker price is the same as FIRM B's, whose upgrade kit would you buy? Should “operating costs” influence our view of the two company's sticker prices?
5. Scheduling of work | X
Instructor notes: Given the high demand for the upgrades, scheduling might be a real problem. Should we give some degree of preference to a company that start work on the Smoketown Plant earlier rather than later in the year? Bear in mind that Mark Smith only has 3 years to meet the new EPA standards.
6. Experience | X
Instructor notes: Some firms have more experience than others in the pollution control game. Are the most experienced firms more likely to provide equipment that in fact meets EPA standards?
7. Qualifications of Key Personnel | X
Instructor notes: Shortages of skilled labor have been reported. If FIRM A can demonstrate that the employees it will assign to the SMOKETOWN upgrade are considerably more qualified than those of its rivals, should personnel qualifications be a factor in making the selection?
8. Mean time between failures | X
Instructor notes: Every time the Pump breaks down, the Smoketown Plant loses the smokestack and must cut back on its daily schedule. Should “meantime between failures” be a factor in making the selection for award?
9. Maintenance and Repair X |
Instructor notes: Should the expected costs for maintaining and repairing the Filter and Scrubber be a factor in evaluating proposed prices?
10. Buy American Act X |
Instructor notes: We are contracting for supplies to be used within the U.S. Given that decision, the FAR requires Strong Jones, the CO, to insert the provision at 52.225-1, Buy American Certificate, and the related clause at 52.225-3, Buy American Act—Supplies, in the solicitation for the Smokestack upgrade. This provision and clause function as a trip wire, raising a flag if any company tries to sell us an imported filter and pump. If FIRM A indicates on the Buy American Certificate that its filter and pump are manufactured in Paraguay, then firms that offer Made-In-America filters and pumps will be entitled to a 6% edge in price (if the firm is a large business outside a labor surplus area) or a 12% edge in price (if the firm is a small business or labor surplus area concern.)
☞ On the other hand, these Buy American Act restrictions would not apply to an acquisition of an “end product” of the magnitude of this scenario from countries or instrumentalities designated under the “Trade Agreements Act ” of 1979.

TOPIC: 6.4.2 SELECTION FACTORS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>r. After finishing with the factors on page CM 6-17, ask the class if any group would recommend other factors over and above those in their class-room materials. If any are volunteered, add those to the flipchart.</p> <p>s. Based on technical factors recommended for the Smokestack upgrade, ask the class whether its factors should be applied on a “go/no-go basis” or should be used to rank incoming offers for a selection on “greatest value.”</p> <p>Record that decision on the flipchart.</p> <p>t. Recap of the Question for Section 6.4.2: “‘What factors should you apply in selecting a competing offeror for award?’”</p> <p>Answer: [State the class decision on whether to select on “lowest price” or “greatest value.”] Based on that decision, Jones selected the evaluation factors for award which you circled on page CM 6-17.</p>	
	<p>u. Ask the Recorder to record this answer.</p>	


TOPIC: 6.4.3 METHOD OF PROCUREMENT**Ref.** Pages 6-40 to 6-44**Objective:** When you finish Section 6.4.3, your students must be able to:

- Recognize a typical setting for determining the method of procurement.
- State the related business question.
- List the different methods of procurement.
- List criteria for selecting each method.

Time: 2:55 — 20 Minutes**Method:** Lecture/Discussion and Group Exercise

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“Selection for award will be competitive. The CO, Strong Jones, has identified the factors that will be applied in making the selection.”</p> <p>b. Present the Question:</p> <p>“Which method of procurement will best serve the Government's need?”</p> <p>c. Present the Choices:</p> <ul style="list-style-type: none"> • Small Purchase • Sealed bidding • Negotiations • Two-step sealed bidding <p>d. Define “Small Purchase” .</p> <p>Acquisition of supplies, nonpersonal services, and construction in the amount of \$25,000 or less through the “simplified procedures” (e.g., imprest funds, purchase orders, and blanket purchase agreements) prescribed in Part 13 of the FAR.</p>	

TOPIC: 6.4.3 METHOD OF PROCUREMENT (CON'T)



Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Present the basic steps in Sealed Bidding:</p> <ul style="list-style-type: none"> • Publicize the proposed action. • Issue an Invitation for Bids. • Receive sealed bids from bidders. • Publicly open the sealed bids. • Award to the low, responsive, responsible bidder— Explain that the low bid price is the "evaluated" low price; that is, price-related factors have been applied. <p>f. Present the basic steps in competitive negotiations.</p> <ul style="list-style-type: none"> • Publicize the proposed action. • Issue a Request for Proposals. • Evaluate proposals (technical and price). • Establish a "competitive range" that consists of proposals that have a reasonable chance of being selected for award. • Hold discussions with offerors in the competitive range. • Request best and final offers from the offerors in the competitive range. • Award a contract based on price and the other evaluation factors stated in the RFP. <p>g. Define Two-Step Sealed Bidding :</p> <p>Step 1: Solicit and discuss technical proposals.</p> <p>Step 2: Solicit sealed bids from offerors whose final technical proposals are acceptable.</p>	
	<p>h. Show VG 6-12 —Conditions for the Use of Sealed Bidding.</p>	

CONDITIONS FOR THE USE OF SEALED BIDDING

- Expectation of receiving more than one sealed bid
- Sufficient time to prepare an IFB, receive and evaluate bids, and make award
- Competition solely on price and price-related factors—no technical ranking factors
- No discussions necessary

VG 6-12

TOPIC: 6.4.3 METHOD OF PROCUREMENT (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. Leaving VG 6-12 up, ask the students to determine which method of procurement should be used in the Smoketown Scenario.</p> <p>j. Select a Group and go over conditions in VG 6-12:</p> <ul style="list-style-type: none"> • Expectation of more than one offer? Yes • Sufficient time? Yes • Competition on price and price-related factors alone? Yes or No (depending on answer to the question in 6.4.2). (Note—if the group decided to use technical factors on a go/no-go basis alone, the answer would be yes). • Need for discussions? Yes. Given the Market Report and the use of a performance specification, we know (1) that offerors will propose different solutions for meeting the EPA standards and (2) that none of the solutions is certain to succeed. Hence, Strong Jones—with assistance from Mark Smith—will probably need to discuss each offeror's technical proposal and capability—both to ensure that Smith has a sufficient understanding of the offer and offeror to apply technical evaluation factors and (2) to identify any technical deficiencies that might be corrected in best and final offers. • Could two step sealed bidding be used? Potentially yes: If discussions can be limited to the issue of technical acceptability, and competition will be on price and price-related factors alone. <p>k. Recap of the Question for Section 6.4.3: “Which method of procurement will best serve the Government's need?”</p> <p>Answer: For the purposes of this course, Strong Jones has decided to negotiate—based on the probable need for such discussions with the offerors. Note, however, that the clause at FAR 52.215-15 (Contract Award) would allow Jones to “award without discussions”, if acceptance of the most favorable initial proposal would result in the lowest overall cost to the Government at a fair and reasonable price.</p>	
	<p>l. Ask the Recorder to record this answer.</p>	

TOPIC: 6.4.4 PROCUREMENT PLANNING

Ref. Pages 6-44 to 6-47

Objective: When you finish Section 6.4.4, your students must be able to:

- Recognize a typical setting for planning the procurement.
- State the related business question.
- Define procurement planning.
- List typical elements of a procurement plan.
- Distinguish ordinary procurement plans from formal source selection plans.

Time: 3:15 — 15 Minutes

Method: Lecture/Discussion and Group Exercise




LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“We have made a number of critical decisions—the specification to be used, the extent of competition, the factors to be applied in selecting an offeror for award, and the method of procurement.”</p> <p>b. Present the Question:</p> <p>“What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?”</p>	

TOPIC: 6.4.4 PROCUREMENT PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="289 342 370 420" data-label="Image"></div>	<p>c. Question: “What items do you think should be included in a procurement plan?” [Solicit answers from the class before providing your own]</p> <p>Potential Answers:</p> <ul style="list-style-type: none"> • The PR and documentation of discussions with the requiring activity regarding the PR. • Decisions on extent of competition. • Selection factors. • Method of procurement. • Milestones for awarding the contract. • Responsibilities. • Clearances, concurrences, and approvals. • Preliminary decisions on terms and conditions for the contract (which we will pick up in Lesson 7). • Preliminary decisions on contract administration tasks, milestones, and responsibilities (which we will pick up in Lesson 8). <p>d. Explain that Federal agencies often develop “formal source selection” plans for large, expensive, negotiated acquisitions.</p>	
<div data-bbox="289 1266 370 1344" data-label="Image"></div>	<p>e. Question: “What's different about a procurement plan when a decision has been made to use formal source selection procedures?” [Solicit answers from the class before providing your own]</p> <p>Answer: Usually in a formal source selection—</p> <ol style="list-style-type: none"> 1. There is a designated Source Selection Authority—generally not the CO. 2. A Source Selection Board (or like organization) is established. The Board is responsible for evaluating proposals and reporting findings and recommendations to the Source Selection Authority. <p>f. Stress that, regardless of whether the procurement plan is formal or informal, written or not, a key issue is one of milestones.</p>	

TOPIC: 6.4.4 PROCUREMENT PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 6-18  	g. Show VG 6-13 and 6-13a: Milestones. Listed on this viewgraph are potential milestones. h. Ask the students to: <ol style="list-style-type: none"> 1. Identify the one milestone that does not apply to the Smoketown scenario. 2. For each milestone, identify the responsible party (e.g., CO, contractor, tech rep, and any others). 	

POTENTIAL MILESTONES

Milestones tracked when soliciting and evaluating offers

1. Complete RFP
2. Forward CBD synopsis
3. Mail RFP
4. Submit by closing date
5. Open bids
6. Complete price analysis
7. Complete technical analysis
8. Rank offers on technical factors
9. Establish initial competitive range
10. Begin discussions
11. Conclude discussions
12. Due date for BAFOs
13. Rank BAFOs on technical factors
14. Identify the top ranked BAFO based on both technical factors and price
15. Recommend award to the SSA
16. Prepare contract
17. Execute contract.

6-13 and 6-13a/CM 6-18

Note--the only milestone that definitely would not apply to the Smoketown scenario: 5



CO: Milestones 1-3, 6, 9-11, 14-17

Contractor: 4 & 12

Technical Representatives 7-8 & 13. Also may play a role in 10, 11, and 15.

Other: Often a separate official is responsible for opening bids (5). A cost/price analyst may lend a hand both in analyzing proposed prices (6) and even in the conduct of discussions with offeror representatives (6, 10, & 11). If a Source Selection Authority has been appointed, that official may also play a role in some of these decisions (e.g., 9).

TOPIC: 6.4.4 PROCUREMENT PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. Based on their answers, inform the class that the Government players constitute the “source selection team” for the procurement.</p> <p>j. Recap of the Question for Section 6.4.4: “What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?”</p> <p> Answer: Jones included the applicable milestones from the list on page CM 6-18. For each milestone, Jones identified a responsible party and has asked them to join the source selection team. Among others, Jones recruited Mark Smith for technical support.</p> <p> k. Ask the Recorder to record this answer.</p>	

RECAP OF LESSON 6



a. Show VG 6-14 and leave it in view during the recap.

Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing
Determination of Need Forecasting Requirements Acquisition Planning	Processing the PR Purchase Requests Funding Market Research Market Research	Analysis of Requirements Specifications Statements of Work Services	Extent of Competition Required Sources Set-Asides 8(a) Procurements Competition Requirements Unsolicited Proposals Selection Factors Lease vs. Purchase Price Related Factors Technical Evaluation Factors Procurement Method Method of Procurement Procurement Planning Procurement Plans

VG 6-14

b. Ask the Recorder to report the Business Questions that were addressed in Lesson 6. For each Issue, have the Recorder also report the corresponding Answer for the Smoketown Scenario.



See the next page for our recap.

See IG page 6-64 for the Transition to Lesson 7.

☞ **LESSON 6 BASIC BUSINESS QUESTIONS** (CM 6-2 and 6-3)

6.1 Determination of Need—What does the Government need, and how can the Government best meet the need?

The Government needs to reduce Smoketown's emissions by at least 20%. We considered 4 options. Based, in part, on data supplied by Strong Jones, Mark Smith:

- Selected the alternative of upgrading existing pollution control equipment, and
- Worked with Jones on a plan for the acquisition.

6.2.1 Processing the Purchase Request—Is the PR acceptable as the basis for the procurement and what are the steps in initiating the procurement.

As the first step in initiating the procurement, Strong Jones critiqued Mark Smith's Purchase Request for upgrading pollution control equipment, obtained corrections from Mark, checked the availability of funds, and accepted the corrected PR.

The CO's next steps are to establish the contract file, update the tracking system, control information about the upcoming acquisition, and assign the PR to a Contract Specialist.

6.2.2 Market Research—What facts do you need about the requirement and the market to make good business decisions and where do you get these facts?

We identified the facts that Strong Jones needs to make good business decisions on the Smokestack upgrade. We identified potential sources of those facts. Based on our advice, Strong Jones researched the market for upgrades and prepared a market report.

6.3 Analysis of Requirement—How can the Government's requirements be stated so as to yield the best market response?

Strong Jones:

1. Decided to use a performance specification.
2. Reviewed Mark Smith's language for the proposed spec, making it tight enough to exclude the “WASH-OUT 's” but not so tight as to hand the award to CLEANCO.

3. Determined that Mark Smith's requirement would be classified as a supply, rather than as a service, contract.

6.4.1 Extent of Competition—Who should you allow to compete for the procurement?

Jones decided to limit competition to business concerns in labor surplus areas.

6.4.2 Selection Factors—What factors should you apply in selecting a competing offeror for award?

[State the class decision on whether to select on “lowest price” or “greatest value.”] Based on that decision, Jones selected the evaluation factors for award which you recorded on page CM 6-17.

6.4.3 Method of Procurement—Which method of procurement will best serve the Government's need?

Strong Jones has decided to negotiate.

6.4.4 Procurement Plans—What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?

Jones included the applicable milestones from the list on page CM 6-18. For each milestone, Jones identified a responsible party and has asked them to join the source selection team. Among others, Jones recruited Mark Smith for technical support.

	<p>TRANSITION TO LESSON 7</p> <p>a. Inform the class that tomorrow, as part of Lesson 7, Strong Jones will solicit offers to supply the Upgrade Kits, evaluate those offers, and make an award.</p> <p>b. Assign Chapter 7 in the Text/Reference as the night's reading.</p>	
--	---	--

OVERVIEW OF LESSON 7

<u>TOPIC</u>		<u>Time</u>	<u>Starting Minutes</u>	<u>Page</u>
WEDNESDAY				
INTRODUCTION TO LESSON 7		8:00	15	7-1
7.1	SOLICITATION	8:15	15	7-2
7.1.1.1	CONTRACT TYPES	8:30	30	7-7
7.1.1.3	FINANCING	9:00	30	7-12
7.1.1.4	USE OF GOVERNMENT PROPERTY	9:30	15	7-17
7.1.1.5	BONDS	9:45	15	7-20
BREAK		10:00	20	
7.1.1.6	SOLICITATION	10:20	20	7-22
7.1.2	SOLICITING OFFERS	10:40	5	7-25
7.1.2.1	PUBLICIZING PROPOSED PROCUREMENTS	10:45	15	7-26
7.1.2.2	PREAWARD INQUIRIES	11:00	30	7-30
LUNCH		11:30	60	
7.1.2.3	PREBID/PREPROPOSAL CONFERENCES	12:30	10	7-32
7.1.2.4	AMENDING AND CANCELLING	12:40	10	7-33
7.1.2.5	SOLICITATIONS			
7.2	EVALUATION (SEALED BIDDING)	12:50	5	7-36
7.2.1	PROCESSING BIDS	12:55	10	7-38
7.2.2	TIME EXTENSIONS FOR BIDS	1:05	5	7-39
7.2.3	LATE BIDS	1:10	10	7-40
7.2.1.4	BID PRICES & RESPONSIVENESS	1:20	40	7-41
7.2.1.5				
BREAK		2:00	20	
7.3	EVALUATION (NEGOTIATION)	2:20	5	7-47
7.3.1.1	PROCESSING PROPOSALS	2:25	5	7-49
7.3.1.2	TECHNICAL EVALUATION	2:30	10	7-50
7.3.1.3	PRICE OBJECTIVES	2:40	10	7-51
7.3.1.4	COST AND PRICING DATA	2:50	10	7-53
7.3.1.5	AUDITS	3:00	5	7-54
7.3.1.6	COST ANALYSIS	3:05	25	7-55

OVERVIEW OF LESSON 7 (CON'T)

THURSDAY

7.3.1.7	EVALUATING OTHER TERMS AND CONDITIONS	8:00	10	7-59
7.3.1.8	COMPETITIVE RANGE	8:10	10	7-62
7.3.2	DISCUSSIONS	8:20	5	7-64
7.3.2.1	FACTFINDING	8:25	5	7-65
7.3.2.2	NEGOTIATION STRATEGY	8:30	10	7-66
7.3.2.3	CONDUCTING NEGOTIATIONS	8:40	20	7-67
7.4	AWARD	9:00	5	7-69
7.4.1.1	MISTAKES IN OFFERS	9:05	10	7-71
7.4.1.2	RESPONSIBILITY	9:15	25	7-74
BREAK		9:40	20	
7.4.1.3	SUBCONTRACTING GOALS	10:00	10	7-79
7.4.1.4	PREPARING AWARDS	10:10	10	7-81
7.4.2	EXECUTING AWARDS	10:20	5	7-84
7.4.2.1	AWARD	10:25	5	7-85
7.4.2.2	DEBRIEFING	10:30	10	7-86
7.4.3	PROTESTS	10:40	20	7-88
7.4.4	FRAUD & TRANSITION	11:00	30	7-90

LESSON 7



SOLICITATION-AWARD PHASE

Solicitation-Award Phase

TOPIC: INTRODUCTION TO LESSON 7**Ref:** Page 7-1**Objective:** When you finish this introduction, your students must be able to:

- List the principal functions of the Solicitation-Award phase

Time: 8:00 AM — 15 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
  CM 7-3 to 7-4	a. Show VG 7-1: Solicitation-Award Phase . b. Refer the class to CM pages 7-3 and 7-4. State that, during the course of Lesson 7, “we will address each of these questions in turn”. c. Select a class member to record answers to the questions. (That class member will recap the Q&As at the end of the Lesson.)	

Functions***Related Business Questions On Pages CM 7-3 and 7-4****Solicitation**

7.1.1 What terms and conditions should be incorporated in the solicitation?

7.1.2 How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?

**Evaluation—
Sealed Bidding**

7.2 Which, if any, of the submitted bids should be considered for award?

**Evaluation—
Negotiation**

7.3.1 Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?

7.3.2 What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?

Award

7.4.1 Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?

7.4.2 How should the contract be executed and announced?

7.4.3 How can any protests of the award be resolved?

7.4.4 Has there been any evidence of fraud or other misconduct in awarding the contract?

*(From VG 7-1)

TOPIC: 7.1 SOLICITATION

Ref: Pages 7-2 and 7-3


Objective: When you finish Section 7.1, your students must be able to:

- Define “solicitation”, “contract clause”, and “solicitation provision.”
- Recognize a typical setting for preparing solicitations.
- State the basic business question.
- List the two principal steps in soliciting offers.

Time: 8:15 — 15 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 7-2: Solicitation.	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
Terms and Conditions Contract Types Letter Contracts Contract Financing Use of Gov't Property & Supply Sources Bonds (Need for bonds) Solicitation Preparation Soliciting Offers Publicizing Proposed Procurements Prebid/Preproposal Conferences Amending Solicitations Cancelling Solicitations			

VG 7-2

TOPIC: 7.1 SOLICITATION (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
Page 7-3	<p>b. Present the Setting:</p> <p>“We have a Purchase Request from Mark Smith and a procurement plan that documents the presolicitation decisions made by Strong Jones, the CO.”</p>	
	<p>c. Present the Basic Business Question:</p> <p>“What terms and conditions should be incorporated in the solicitation?”</p>	
	<p>d. List the Steps:</p> <ol style="list-style-type: none"> 1. Select terms and conditions for the solicitation. 2. Solicit offers. 	
	<p>e. Define “Solicitation”</p> <p>Solicitations consist of (a) a draft contract and (b) solicitation provisions. The draft contract includes a “Schedule” —which describes the requirement—and Contract Clauses.</p> <p>In sealed bidding, solicitations are called Invitations for Bids (IFBs). In negotiated acquisitions, solicitations are called Requests for Proposals (RFPs).</p>	
	<p>f. Define “Contract Clause” and “Solicitation Provision.”</p> <p>Contract clauses state the rights and obligations of parties to the contract following award.</p> <p>Solicitation provisions tell offerors how to prepare and submit offers. Solicitation provisions also describe the evaluation of offers and the offeror's right to protest award. Provisions are not part of the resulting contract.</p>	

TOPIC: 7.1 SOLICITATION (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 7-5 and 7-6	<p data-bbox="245 323 951 432">g. Have the students turn to page C M 7-5 and lead them through the FAR Provision & Clause Matrix. Notes:</p> <p data-bbox="293 453 980 552">Federal solicitations often contain literally hundreds of provisions and clauses—many incorporated by reference.</p> <p data-bbox="293 573 980 638">Several FAR clauses and provisions are required in all IFBs and RFPs (i.e., “boilerplate”).</p> <p data-bbox="293 659 927 758">Others are “required when applicable” or are “optional.” The CO must identify the clauses and provisions apply to the acquisition at hand.</p> <p data-bbox="245 795 992 863">h. Point to the Clause at 52.216-1 in the Provision and Clause matrix.</p> <p data-bbox="293 884 948 917">Note that this Clause is Required-When-Applicable.</p> <p data-bbox="245 955 992 1136">i. Have the students turn to page C M 7-6 and read the text of the clause at 52.216-1 and related instructions. Ask: “Should Strong Jones incorporate this clause in the RFP for upgrading the Smoketown plant emission controls?” [Yes]</p> <p data-bbox="245 1173 987 1354">j. Tell the students that, in this course, we will review only a few of the many possible provisions and clauses that might apply to Mark Smith's requirement. Specifically, we will consider terms and conditions related to:</p> <ul data-bbox="272 1362 938 1518" style="list-style-type: none"> • Type of contract • Providing Gov't financing for the work • Furnishing Government property for the work • Requiring the contractor to furnish a bond 	



52.301 Solicitation provisions and contract clauses (Matrix).

Key:

Principle type and/or purpose of contract:

P or C = Provision or Clause
 IBR = Is Incorporation By Reference authorized?
 UCF = Uniform Contract Format Section, when applicable

 R = Required
 A = Required-When-Applicable
 O = Optional
 √ = Revision

FP SUP = Fixed-Price Supply
 CR SUP = Cost-Reimbursement Supply
 FP R&D = Fixed-Price Research & Development
 CR R&D = Cost-Reimbursement Research & Development
 FP SVC = Fixed-Price Service
 CR SVC = Cost Reimbursement Service
 FP CON = Fixed-Price Construction
 CR CON = Cost Reimbursement Construction
 T&M LH = Time & Material/Labor Hours
 LMV = Leasing of Motor Vehicles

COM SVC = Communication Services
 DDR = Dismantling, Demolition, or Removal of Improvements
 A-E = Architect-Engineering
 FAC = Facilities
 IND DEL = Indefinite Delivery
 TRN = Transportation
 SP = Small Purchases
 UTTL SVC = Utility Services

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A-E	FAC	IND DEL	TRN	SP	UTL SVC
52.216-1 Type of Contract.	16.105	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.216-2 Economic Price Adjustment—Standard Supplies.	16.203-4(a)	C	No	I	O									O					O			
52.216-18 Ordering.	16.505(a)	C	Yes	I															A			
52.216-19 Delivery-Order Limitations.	16.505(b)	C	Yes	I															A			
52.216-20 Definite Quantity.	16.505(c)	C	Yes	I															A			
52.216-21 Requirements.	16.505(d)(1)	C	Yes	I															A			
52.216-22 Indefinite Quantity.	16.505(e)	C	Yes	I															A			
52.228-1 Bid Guarantee.	28.101-3(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R				R					R	A						A	
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A		A		A					A	A		A	A	A			
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502-3(b)(2)	P	Yes	L	A		A		A		A			A	A			A	A			
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A		A		A					A	A			A	A			
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A		A		A		A	A		A	A		A	A	A			
52.245-2 Government Property (Fixed-Price Contracts).	45.106(b)(1)	C	Yes	I	A		A		A		A			A		A		A	A		A	

**EXCERPTS FROM
FAR PARTS 16 (TYPES OF CONTRACTS) AND 52**

SUBPART 16.1—SELECTING CONTRACT TYPES

16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at 52.216-1, Type of Contract, in requests for proposals and in requests for quotations unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision in requests for proposals (RFP's) and requests for quotations (RFQ's), unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a [Contracting Officer insert specific type of contract] contract resulting from this solicitation.

(End of provision)

(R 3-501(b) Sec L (iv))


TOPIC: 7.1.1.1 CONTRACT TYPES; 7.1.1.2—LETTER CONTRACTS**Ref:** Pages 7-4 to 7-9**Objective:** When you finish Section 7.1.1.1, your students must be able to describe:

- The two basic types of compensation arrangements (Fixed Price & Cost Reimbursement).
- Types of ordering arrangements.
- Steps in deciding which type of contract to solicit.
- Related clauses and provisions.

Time: 8:30 — 30 Minutes**Method:** Lecture/Discussion, Roleplay #1, and a Group Exercise.**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define types of compensation arrangements:</p> <ul style="list-style-type: none"> • Fixed Price—the contract stipulates a fixed sum of money to be paid the contractor as consideration for performance. Stress that the contractor is obligated to deliver an acceptable product for the agreed-to price, no matter how much it costs the contractor. • Cost Reimbursement—the Government reimburses the contractor for the allowable costs of performance as or after they are incurred. Stress that the contractor is only obligated to make a “good faith” effort within the estimated cost—and may not continue performance once the money runs out. <p>b. Define types of ordering arrangements.</p> <ul style="list-style-type: none"> • Definite Quantity/Definite Delivery—the contract is for 100 widgets, 50 to be delivered by July 1 to the Oshkosh Federal Warehouse and 50 by August 1 to the Dayton Federal Warehouse. • Definite Quantity/Indefinite Delivery—the contract is for 100 widgets but does not schedule delivery. Instead, managers at the Oshkosh and Dayton Federal Warehouses will place delivery orders after award—each order specifying the number of widgets to ship and when they must arrive. • Indefinite Quantity—the contract is for a 100 widgets, but managers at the Oshkosh Federal Warehouse and the Dayton Federal Warehouse may order up to 500 additional widgets during the contract period at a price of \$50 per widget. <p><i>Continued on next page</i></p>	

TOPIC: 7.1.1.1 CONTRACT TYPES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<p>Page 7-6</p> 	<ul style="list-style-type: none"> • Requirements—the contract does not require the Government to purchase a single widget. Instead, managers at the Oshkosh Federal Warehouse and the Dayton Federal Warehouse have the right to order up to 1,000 widgets during the life of the contract at a price of \$50 per widget. <p>c. Describe the steps in deciding the type of contract to solicit.</p> <p>COs solicit Firm Fixed Price offers when the risks involved are minimal . Otherwise, the CO must (1) analyze risks inherent in the acquisition, (2) identify the type of contract that would best mitigate the risk or risks at issue, and (3) ascertain whether that contract type would be proper under the circumstances, given any limitations on its use.</p> <p>d. Have the students turn to page 7-6 and lead them through the first (Principal Risk to be Mitigated) and third (Elements) rows.</p> <p>e. Have the students turn to page CM 7-6 and ask two students to read the roleplay.</p>	


Roleplay #1 (CM 7-6)

Mark Smith: What type of contract are you considering for the Smoketown procurement?

Strong Jones: Firm-fixed price.

Mark Smith: Why firm-fixed price instead of cost reimbursement? After all, this equipment is relatively new to the market.

TOPIC: 7.1.1.1 CONTRACT TYPES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Have the students form their groups. Ask them to read the Market Report, pages CM 6-11 (V. Market Prices) and CM 6-12 (VII. Commercial Terms). Ask the Question—How would you answer Mark Smith? Do you agree with the decision made by Jones to solicit a firm fixed price type of contract?</p>	

EXCERPTS FROM THE MARKET REPORT (CM 6-11 AND 6-12)**V. Market Prices:**

Mark Smith, program manager for this acquisition, provided an independent cost estimate of \$3 million per smokestack. We were able to verify the reasonableness of this cost estimate from reports on upgrades acquired by private and public (State and local) buyers. Over the past year, prices have ranged from \$2,400,000 to \$2,900,000 per smokestack. Variations in price appear to largely be a function of:

- The physical shape and dimensions of the smokestack and scrubber chamber.
- Capacity, effectiveness, and condition of the existing filter.
- Time (all other things being equal, later buys have tended on average to be priced slightly higher than earlier buys).

VI. Trends in Supply and Demand





As indicated above, we know of only five companies who allege that their upgrade packages can meet the new EPA requirements. Since the new EPA standards were announced, demand has soared. It appears that buyers for virtually every power plant in the U.S. and Canada are actively expressing interest in the upgrades. There have already been spot shortages of several chemicals and subassemblies required for the upgrades. Shortages of skilled labor have also been reported.

VII. Commercial Terms:


Reportedly, most of the sales have been on a firm fixed price basis. Most of the offerors advertise maintenance and repair services as separately priced options. Chemicals are supplied under indefinite delivery, “price per liter” arrangements.

Given the high upfront costs for manufacturing the equipment and the fact that any one smokestack may require six months of work, offerors have typically required private sector buyers to make down payments at the time of contract award. These down payments have been as high as 50% of the total price. In view of trends in supply and demand (see above), as often as not, offerors have received the down payments.

TOPIC: 7.1.1.1 CONTRACT TYPES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. Question: Do you agree with the decision made by Jones to solicit a firm fixed price type of contract? [Solicit answers from the class before providing your own]</p> <p>Answer: Yes—because the financial risk to the contractor is minimal given the fact that:</p> <ul style="list-style-type: none"> • We are buying commercially available equipment , and • This equipment has been installed by firms in the market at comparable sites. 	<p>Note—if the students insist upon use of a different type of contract (e.g., FP-EPA), allow them the opportunity to vote that way.</p> <p>However, tell the students that, for the purposes of the continuing saga of the Smoketown Scenario, Jones has decided on FFP.</p>
	<p>h. Question: What do we mean by "minimal financial risk"? [Solicit answers from the class before providing your own]</p> <p>Answer: An offeror can estimate its costs for doing the work with a high degree of certainty.</p>	
	<p>i. Question: Would indefinite delivery terms and conditions be appropriate for any aspect of the Smokestack upgrades? [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. Indefinite-Delivery contracts are for use in acquiring supplies when the exact times and quantities of future deliveries are not known at the time of contract award. Per the Market Report, that would be true of chemicals to be acquired for the Chemical Tank.</p>	<p><i>You might also suggest options for acquiring chemicals in the outyears perhaps priced on an FP-EPA basis. See FAC 90-4, which authorizes the use of options in indefinite delivery contracts.</i></p>
	<p>j. Question: What about using a letter contract? Have the students read page 7-9 of the Text and then answer the question. [Solicit answers from the class before providing your own]</p> <p>Answer: No. Letter contracts are only appropriate for emergency acquisitions when there is no time for the ordinary course of solicitation and award.</p>	

TOPIC: 7.1.1.1 CONTRACT TYPES (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>k. Clauses and Provisions: “Jones has decided on a Firm Fixed Price Contract, with Indefinite Delivery terms for chemical supplies. Look at the Provision and Clause Matrix (C M 7-5). Two columns apply: FP Sup and IND DEL. Jones will reference those 2 columns in identifying clauses and provisions that might be applicable to the Smokestack upgrades. Among the potential clauses and provisions are those having to do with financing.”</p> <p>Note that the solicitation will have a separate line item for the chemical supplies—offerors must propose a per drum price for the chemicals. For the purpose of this case study, Strong Jones will solicit these prices on the basis of terms and conditions prescribed for requirements contracts per FAR 16.503, with funds to be obligated by each delivery order rather than by the contract itself.</p>	

TOPIC: 7.1.1.3 FINANCING

Ref: Pages 7-10 to 7-11

Objective: When you finish Section 7.1.1.3, your students must be able to:

- List and define four types of financing.
- Identify related clauses and provisions.

Time: 9:00 — 30 Minutes

Method: Lecture/Discussion and Group Exercise.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define financing:</p> <p>“Payments made to a contractor before supplies have been delivered or services rendered. Contractors use the Government's money for such upfront expenses as:</p> <ul style="list-style-type: none">• Materials and equipment.• Facilities.• Subcontracts.” <p>b. Explain why the Government occasionally finances contractors.</p> <p>Government financing may be necessary when private sources of funds, such as the company's equity or borrowed capital, would be inadequate or unaffordable. The longer the term of the contract, the more the contractor will be concerned about its ability to maintain the necessary cash flow during contract performance.</p> <p>c. Present types of financing.</p> <p>1. Customary Progress Payments: Payments made on the basis of costs incurred or on progress in completing the work. When based on costs incurred, contractors submit invoices at least monthly. The Government reimburses the contractor for 80% of the allowable costs on the invoice. For small businesses, the customary rate is 85%.</p> <p>Point out progress payments apply only to fixed price contracts. Remind the students that, under cost reimbursement contracts, contractors are also reimbursed periodically for allowable costs incurred in the previous period.</p>	

TOPIC: 7.1.1.3 FINANCING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>2. Loan Guarantees: A guarantee to a lending institution that the Government will stand behind loans to the contractor.</p> <p>3. Unusual Progress Payments: Payments at a rate higher than 80% of costs incurred (or higher than 85% for small business concerns).</p> <p>4. Advance Payments: Payments made to the contractor in advance of any incurrence of cost. Advance payments are made rarely.</p> <p>d. Define “partial payments” as an alternative to financing the contractor.</p> <p>Partial Payments: Payments may be made for partial deliveries. For example, a contract for the delivery of 100 units per month, at a price of \$75.00 each, for a period of 12 months may provide for monthly payment -- provided that the 100 units delivered each month are accepted by the Government.</p> <p>e. Have the students form their groups. Ask them to read the Market Report, pages CM 6-11 (VI. Trends in Supply and Demand) and CM 6-12 (VII. Commercial Terms). Question—Should the RFP for the Smoketown upgrades provide for financing, and, if yes, what type of financing?</p>	

**EXCERPTS FROM THE MARKET REPORT (CM 6-11 & 12)*****VI. Trends in Supply and Demand**


As indicated above, we know of only five companies who allege that their upgrade packages can meet the new EPA requirements. Since the new EPA standards were announced, demand has soared. It appears that buyers for virtually every power plant in the U.S. and Canada are actively expressing interest in the upgrades. There have already been spot shortages of several chemicals and subassemblies required for the upgrades. Shortages of skilled labor have also been reported.

* For the full text of the Market Report, see pages 6-23 to 6-26 in this Instructor Guide.


VII. Commercial Terms

Reportedly, most of the sales have been on a firm fixed price basis. Most of the offerors advertise maintenance and repair services as separately priced options. Chemicals are supplied under indefinite delivery, “price per liter” arrangements.

Given the high upfront costs for manufacturing the equipment and the fact that any one smokestack may require six months of work, offerors have typically required private sector buyers to make down payments at the time of contract award. These down payments have been as high as 50% of the total price. In view of trends in supply and demand (see above), as often as not, offerors have received the down payments.

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: “Should the RFP for the Smoketown upgrades provide for financing, and, if yes, what type of financing?” [Solicit answers from the class before providing your own]</p> <p>Answer: Provide Financing, in the form of progress payments.</p> <p>Potential Reasons—</p> <ol style="list-style-type: none"> 1. Contractors have heavy upfront expenses that have to be borne for at least six months before the first Federal paycheck would be cut (for acceptance of Smokestack upgrade #1, if the contract provides for partial payments). 2. If Jones fails to provide financing, some or all of the potential competitors may bow out—given the high level of demand for their services and the ready availability of financing from private sector customers. 3. Government financing would mean a lower cost of capital for the work, which in turn should result in correspondingly lower prices. <p>g. Clauses and Provisions: “Jones has decided to make progress payments available to offerors. Look at the Provision and Clause Matrix (C M 7-5) and excerpts from FAR Part 32 on page CM 7-7. ”</p>	

TOPIC: 7.1.1.3 FINANCING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>h. Question: “Which provisions and clauses prescribed in Part 32 apply to the acquisition?” [Solicit answers from the class before providing your own]</p> <p>Answers: 52.232-13, Notice of Progress Payments, and 52.232-16, Progress Payments</p>	

**EXCERPTS FROM
FAR PARTS 32 (CONTRACT FINANCING) AND 52**

SUBPART 32.1—GENERAL

* * * * *

32.111 Contract clauses.

(a) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates, in accordance with agency regulations—

(1) The clause at 52.232-1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated; . . .

SUBPART 32.5—PROGRESS PAYMENTS BASED ON COSTS

* * * * *

32.502-3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.232-13, Notice of Progress Payments, in invitations for bids and requests for proposals that include a Progress Payments clause.

(b)(1) Under the authority of the statutes cited in 32.101, an invitation for bids may restrict the availability of progress payments to small business concerns only.

(2) The contracting officer shall insert the provision at 52.232-14, Notice of Availability of Progress Payments Exclusively for Small Business Concerns, in invitations for bids if it is anticipated that (1) both small business concerns and others may submit bids in response to the same invitation and (2) only the small business bidders would need progress payments.

(c) The contracting officer shall insert the provision at 52.232-15, Progress Payments Not Included, in invitations for bids if the solicitation will not contain one of the provisions prescribed in paragraphs (a) and (b) above.

32.502-4 Contract clauses.

(a) The contracting officer shall insert the clause at 52.232-16, Progress Payments, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

52.232-1 Payments.

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price contract, a fixed-price service contract, or a contract for non-regulated communication services is contemplated:

PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

52.232-13 Notice of Progress Payments.

As prescribed in 32.502-3(a), insert the following provision in invitations for bids and requests for proposals that include a Progress Payments clause:

NOTICE OF PROGRESS PAYMENTS (APR 1984)

The need for customary progress payments conforming to the regulations in Subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

52.232-16 Progress Payments.

(a) As prescribed in 32.502-4(a), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with 32.501-1 for the progress payment and liquidation rate indicated.

* * * * *

PROGRESS PAYMENTS (AUG 1987)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 80 percent of the Contractor's cumulative total costs under this contract, as shown by records maintained by the Contractor for the purpose of obtaining payment under Government contracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract.

* * * * *

TOPIC: 7.1.1.4 USE OF GOVERNMENT PROPERTY**Ref:** Pages 7-11 to 7-12**Objective:** When you finish Section 7.1.1.4, your students must be able to:

- Describe types of Government furnished property (GFP).
- State reasons to make GFP available in a solicitation.

Time: 9:30 — 15 Minutes**Method:** Lecture/Discussion.**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Describe types of Government furnished property:</p> <ul style="list-style-type: none"> • Facilities • Material • Motor Vehicles • Special Tooling • Special Test Equipment <p>b. Describe reasons for offering GFP to contractors.</p> <p>Generally, contractors are responsible for furnishing their own tools and supplies when manufacturing and installing equipment. Explain that GFP may be in the Government's interests when:</p> <ul style="list-style-type: none"> • The Government is the only source of supply for an item that is to be used in connection with contract performance (e.g., certain nuclear products), or • The cost of having the Government furnish property to a contractor is less than if the contractor furnished it. 	
<div style="border: 1px solid black; padding: 2px; display: inline-block;">?</div>	<p>c. Ask students to read the Market Report, page CM 6-9 (I. Making and Installing the Upgrade Kit).</p> <p>Question—“Will the contractor need any Government property to upgrade the Smokestacks?”</p>	

EXCERPTS FROM THE MARKET REPORT (CM 6-9)

I. Making and Installing the Upgrade Kit:

To supply an upgrade, the company must:

- Buy chemicals, parts for the Filter, and other supplies.
- **Extract the existing Filter, ship it to its plant, and rebuild it.**
- Design and make the Replacement Pump, based on (1) the dimensions of the existing Scrubber chamber and (2) existing plumbing and electrical connections.
- Mix the chemicals and fill the Tank.
- Transport the finished pieces to the site.
- Install the Replacement Pump, Chemical Tank, Replacement Brackets, and Rebuilt Filter. [emphasis added]



d. **Question:** “Does the contractor need Government property to upgrade the Smokestacks?” [Solicit answers from the class before providing your own]

Answer: **Yes**—the existing filter.

[Note to instructor: A student might suggest that the smokestacks, scrubbers, water pipes, and the like also represent “property”. Such items would probably be covered by construction-related clauses prescribed in FAR Part 36 (Construction) rather than the property-related clauses from Part 45. Per FAR 36.101(c), applicable construction clauses might, among others, include:

- Material and workmanship (52.236-5)
- Permits and responsibilities (52.236-7)
- Protection of existing vegetation, structures, equipment, utilities, and improvements (52.236-9)
- Operations and storage areas (52.236-10)]

36.101(c): “A contract for both construction and supplies or services shall include (1) clauses applicable to the predominant part of the work (see subpart 22.4) or (2) if the contract is divided into parts, the clauses applicable to each portion.”

e. **Clauses and Provisions:** “Jones has decided that the existing filter must be identified in the Schedule as property to be furnished the contractor. See the Provision and Clause Matrix (C M 7-5) and page CM 7-9 to identify the property clause”

EXCERPTS FROM FAR PARTS 45 (GOVERNMENT PROPERTY) AND 52

SUBPART 45.1—GENERAL

* * * * *

45.106(b) Government property clauses.

This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.

* * * * *

(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

52.245-2 Government Property (Fixed-Price Contracts).

As prescribed in 45.106(b)(1), insert the following clause:

GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as “Government-furnished property”).

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

* * * * *

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

* * * * *

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

* * * * *

(End of clause)

TOPIC: 7.1.1.5 BONDS


Ref: Pages 7-12 to 7-14

Objective: When you finish Section 7.1.1.5, your students must be able to:

- Define “bond” and describe types of bonds.
- Identify situations in which a bond might be necessary.

Time: 9:45 — 15 Minutes

Method: Lecture/Discussion.

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define “bond” and lead students through the sample bond (CM 7-10).</p> <p>“A bond is a written instrument executed by an offeror or contractor (the “principal”) and a second party (the “surety”) to assure fulfillment of the principal's obligations to the Government). If the principal fails to meet a covered obligation, the surety has to cover the Government's loss to the extent stipulated in the bond.”</p> <p>Bonds protect the Government against such risks as:</p> <ol style="list-style-type: none">1. Withdrawal of a bid by the apparent winning bidder2. Failure to complete the work of the contract.3. Failure by the contractor to pay subcontractors. <p>b. Describe conditions under which COs require offerors to submit bonds.</p> <p>Bonds are required for construction contracts in the U.S. over \$25,000. For other contracts, bonds are used only when deemed necessary by the CO.</p>	
	<p>c. Question: Should Jones require offerors to submit bonds for the Smoketown upgrades? [Solicit answers from the class before providing your own]</p> <p>Answer: No. The question is whether the risk of default is high enough to make bonds a worthwhile investment. Jones has decided against any bonding requirement because firms in this market have generally had a good track record for honoring their obligations.</p>	

SF 25 PERFORMANCE BOND

TOPIC: 7.1.1.6 SOLICITATION

Ref: Pages 7-14 to 7-16


Objective: When you finish Section 7.1.1.6, your students must be able to:

- Identify the two types of solicitation formats.
- List and describe the four basic parts of solicitation formats.

Time: Break prior to this lesson. Resume at 10:20 — 20 Minutes

Method: Lecture.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the 2 types of solicitation formats:</p> <ol style="list-style-type: none"> 1. The Uniform Contract Format (UCF)—SF 33. 2. The Simplified Format—SF 1447. <p>b. Identify the four parts of a solicitation:</p> <ol style="list-style-type: none"> 1. The Schedule. 2. Contract Clauses. 3. Attachments. 4. Representations and Instructions. <p>c. Lead students through Exhibit 7-7 on pages 7-15 and 7-16.</p> <p>d. Recap of the Question for Section 7.1.1: “What terms and conditions should be incorporated in the solicitation?”</p> <p>Answer: Jones has decided to:</p> <ol style="list-style-type: none"> 1. Solicit Firm-Fixed-Price offers, with indefinite delivery terms for acquiring chemicals to refill the Chemical Tank. 2. Make Government financing available. 3. Furnish Government property—namely, the existing filter. 4. Not require bonds. <p>Using the FAR Provision and Clause Matrix, Jones has selected terms and conditions for the RFP that are entailed by these decisions.</p> <p>e. Ask the recorder to write the answer on page CM 7-3 of his/her book.</p>	

SF 33 SOLICITATION, OFFER, AND AWARD

SF 1447 SOLICITATION/CONTRACT

TOPIC: 7.1.2 SOLICITING OFFERS**Ref:** Page 7-17**Objective:** When you finish Section 7.1.2, your students must be able to:

- Recognize a typical setting for soliciting offers.
- State the basic business question.
- List the two principal steps in processing a purchase request.

Time: 10:40 — 5 Minutes**Method:** Lecture.

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“The RFP is complete and ready for release.”</p> <p>b. Present the Basic Business Question:</p> <p>“How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?”</p> <p>c. List the steps:</p> <ol style="list-style-type: none"> 1. Publicize the requirement. 2. Answer inquiries. 3. Conduct prebid/preproposal conferences, where necessary. 4. Where necessary, amend or cancel the solicitation. 	

TOPIC: 7.1.2.1 PUBLICIZING PROPOSED PROCUREMENTS

Ref. Pages 7-17 to 7-18



Objective: When you finish Section 7.1.2.1, the students must be able to:

- Define synopsis.
- Describe other methods of publicizing.

Time: 10:45 — 15 Minutes

Method: Lecture/Discussion

LESSON PLAN



Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Question: Why is it important to publicize a solicitation? [Solicit answers from the class before providing your own]</p> <p>Answer: Publicizing:</p> <ul style="list-style-type: none"> • Increases competition • Broadens industry participation in meeting Government requirements • Assists small, small/ disadvantaged, and labor surplus area concerns in obtaining contracts and subcontracts <p>b. Describe the process of synopsisizing proposed procurements in the Commerce Business Daily.</p> <p>Lead students through the sample CBD page on pages CM 7-13 and 14 .</p> <p>Explain that a CBD synopsis is generally required for acquisitions over the small purchase threshold.¹ Also point out there are some exceptions to this requirement at FAR 5.202.</p>	
	<p>c. Lead the students through the sample CBD pages (CM 7-13 and 7-14).</p>	

¹FAC 90-7 deleted the requirement to synopsise noncompetitive contract actions under \$25,000.

SAMPLE CBD PAGE

SAMPLE CBD PAGE (CON'T)

TOPIC: 7.1.2.1 PUBLICIZING PROPOSED PROCUREMENTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
 	<p>d. Question: Can you think of other ways to publicize the Smokestack Upgrades other than through the CBD?</p> <p>Write their answers on a flipchart. Among the potential answers:</p> <ul style="list-style-type: none"> • Mail the RFP to the five companies identified in the Market Report [but warn the students that a notice of the contract action must be published in the CBD at least 15 days before issuance of the RFP.] • Post a notice of the RFP in public places. • Assist the National Association of Air Purification and Odor Abatement Manufacturers in disseminating information to their members. • Place a brief announcement in the Journal of Emission Control at no cost to the Government. • Advertise on an Smoketown electronic bulletin board. 	

TOPIC: 7.1.2.2 PREAWARD INQUIRIES


Ref. Page 7-19

Objective: When you finish Section 7.1.2.2, the students must be able to:

- Describe the CO's responsibility for answering inquiries.
- Identify the types of questions that a CO may and may not answer.

Time: 11:00 — 30 Minutes

Method: Roleplay

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Explain that all inquiries shall be referred to the CO to avoid situations that might be viewed as improper disclosure. Technical or other information shall be transmitted only by the CO or others having contractual authority.	
	b. Setting: A contractor walks into the contracting office and wants to speak to Strong Jones.	
	c. Choose one student in the class to read the role of the contractor. Have the class as a whole play Jones.	
CM 7-15		

Roleplay #2 (CM 7-15)

Contractor: May I ask some questions about this RFP for upgrading pollution-control devices?

Jones: [Have the class answer for Jones. The School solution: “I can try to help you, but I may be limited in what I can say. I can only give general information that is not prejudicial to other offerors. I wouldn't want to give you an unfair advantage over another. What are your questions?”]

Contractor: I don't understand the clause on progress payments. Can you explain it to me in English?

Jones: [Have the class answer for Jones. The School solution: “Let me explain.”]

Contractor: How much does the Government expect to pay for this contract? If I give you a proposal for \$9 million, would I be in the ballpark?

Jones: [Have the class answer for Jones. The School solution: “I am not permitted to give out that kind of information.”]

Contractor: I believe paragraph 8 of the specification is ambiguous. As I read it, the requirement for replacing the filter support brackets is predicated on the assumption that rebuilding the filter adds significantly to its weight. However, my rebuilt filters only weigh a couple of pounds more than the originals. Is it okay if I base my proposal on the assumption that I can leave the existing brackets in place?

Jones: [Have the class answer for Jones. The School solution: “I will confer with the Requirements Manager. If it appears that an ambiguity exists, we will amend the solicitation to correct it. If we believe the specifications are clear and unambiguous, we will not change them and will expect your proposal to be responsive to our requirements. I will let you know.”]

Contractor: Can you at least tell me who I am competing against?

Jones: [Have the class answer for Jones. The School solution: “No.”]

Contractor: How about a ballpark figure of the number of companies competing for the award?

Jones: [Have the class answer for Jones. The School solution: “Sorry.”]

Contractor: I plan to hand-deliver my proposal. Can you give me directions on how to find the building where we are suppose to deliver the proposals?

Jones: [Have the class answer for Jones. The School solution: Provide address as shown on the solicitation, and recommend, as an alternative, mailing by certified mail five days in advance or express mail two days in advance—Advise the offeror that he is taking a risk in hand-carrying the offer.]

TOPIC: 7.1.2.3 PREBID/PREPROPOSAL CONFERENCES

Ref. Page 7-19 and 7-20


Objective: When you finish Section 7.1.2.3, the students must be able to:

- Define prebid/preproposal conferences and state their purposes.
- Identify the types of questions that a CO may and may not answer.

Time: Break for Lunch. Resume at 12:30 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Question: “If, as the President of Scrubbco, you were planning to submit an offer , would you want to examine the Smoketown Plant? Why or why not? ” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes—to reduce the business risk inherent in tendering an offer. Jones is soliciting a Firm Fixed Price Contract with a performance specification. If awarded the contract, Scrubbco would have to meet the new Smoketown standards even if its costs exceed the contract price.</p> <p>The Market Report implies that the cost of performance is related to the physical shape and dimensions of the smokestack and scrubber chamber, as well as of the capacity, effectiveness, and condition of the existing filter. To more accurately forecast its costs, Scrubbco should have an opportunity to examine the existing filters, scrubber chambers, and smokestacks.</p> <p>b. Define prebid/preproposal conferences.</p> <p>A meeting between the Government and potential offerors, held before bid opening or before the closing date for proposals. The CO, or designated representative, conducts the conference.</p> <p>c. State their purposes.</p> <ul style="list-style-type: none"> • Provide for inspection of the work site or GFP. • Explain complicated specifications and requirements. • Explain revisions to requirements. • Address offeror inquiries. 	

TOPIC: 7.1.2.4 AND 7.1.2.5 AMENDING AND CANCELLING SOLICITATIONS

Ref. Page 7-20 to 7-22



Objective: When you finish Section 7.1.2.3, the students must be able to:

- Identify reasons for amending or cancelling a solicitation.
- State the steps and forms used in amending and cancelling solicitations.

Time: 12:40 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Warn students that COs may not change the solicitation verbally during a prebid or preproposal conference. Instead, any change must take the form of a written amendment.	
	b. Question: When should a CO amend a solicitation and when should the CO cancel it? Have the class read pages 7-20 and 7-21.	
	c. Show VG 7-3. Ask the students to identify which circumstances would give rise to an amendment and which would necessitate cancellation. Answers are provided for you in brackets.	

AMEND OR CANCEL?

1. Requirement no longer exists [CANCEL]
2. Correct or clarify ambiguous solicitation [AMEND]
3. Change quantity requirements, specifications, delivery requirements, or due date for offer [AMEND]
4. Funds are no longer available [CANCEL]
5. Overall scope of proposed contract has changed substantially relative to the original synopsis and solicitation [CANCEL--PERHAPS RESOLICIT]

VG 7-3

**TOPICS: 7.1.2.4 AND 7.1.2.5 AMENDING AND CANCELLING
SOLICITATIONS (CON'T)**

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 7-16	<p>d. Present the SF 30 and identify the firms to whom an amendment must be sent.</p> <p>With respect to IFBs, a copy of the amendment must be sent to all bidders who were provided a copy of the IFB. With respect to RFPs, a copy of the amendment must be sent:</p> <ul style="list-style-type: none"> • If before the closing date, to all offerors provided a copy of the RFP • If after the closing date, to all responding offerors • If after the competitive range has been established, to all offerors in the range <p>e. Present the steps in cancelling a solicitation.</p> <ul style="list-style-type: none"> • Return unopened bids or proposals • Send a cancellation notice to all prospective offerors • Briefly explain in the cancellation notice why the solicitation was cancelled • Consider placing a cancellation notice in the CBD <p>f. Recap of the Question for Section 7.1.2: “How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?”</p> <p>Answer: Jones:</p> <ol style="list-style-type: none"> 1. Publicized the requirement by synthesizing it in the CBD and by mailing the RFP to potential offerors listed in the Market Report. [Add any other methods of publicity suggested by the class]. 2. Answered a number of questions from an offeror. 3. Held a preproposal conference at the Smoketown Plant, in part to allow potential offerors to examine the smokestacks, scrubbers, and filters. 4. Neither amended nor cancelled the RFP. <p>g. Ask the recorder to write these answers on page CM 7-3 of his/her book.</p>	

SF 30 AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

TOPIC: 7.2 EVALUATION (SEALED BIDDING)


Ref: Page 7-23

Objective: When you finish Section 7.2, your students must be able to:

- Recognize a typical setting for evaluating bids.
- State the basic business question.
- List the five principal steps in evaluating bids.

Time: 12:50 — 5 Minutes

Method: Lecture

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Show VG 7-4: Evaluation (Sealed Bidding).</p> <p>b. Inform the class that, since Strong Jones has decided to negotiate, we must temporarily step outside of the macro to discuss bid evaluation.</p>	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
	Bid Evaluation Processing Bids Time Extensions for Bids Late Offers Bid Prices Responsiveness		

VG 7-4

TOPIC: 7.2 EVALUATION (SEALED BIDDING) (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. Present the Setting:</p> <p>“An IFB has been sent out, and the CO has received a number of bids in response.”</p> <p>d. Present the Basic Business Question:</p> <p>“Which, if any, of the submitted bids should be considered for award?”</p> <p>e. List the steps:</p> <ol style="list-style-type: none"> 1. Process and open the bids. 2. Determine whether award can be made within the acceptance period on the submitted bids. 3. Determine whether any late bids can be considered. 4. Identify the lowest price bid and determine whether that price is fair and reasonable. 5. Determine whether low bid is responsive. 	

TOPIC: 7.2.1 PROCESSING BIDS

Ref. Page 7-24

Objective: When you finish Section 7.2.1, the students must be able to:

- Identify steps in processing and opening bids.
- Define “firm bid”.

Time: 12:55 — 10 Minutes

Method: Lecture

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Reintroduce sealed bidding—</p> <p>The essence of sealed bidding is that sealed bids are publicly opened, and that award is made to the lowest responsive, responsible bidder.</p> <p>b. Present steps in processing bids.</p> <ul style="list-style-type: none">• Bids received are not opened until the time specified for bid opening• Bids are secured in a locked box, to prevent tampering• All bids received are accounted for• Bids are publicly opened at the time set for bid opening, and are opened only by an authorized person• Prices bid are properly recorded on an "Abstract of Offers" form. <p>c. Describe the “firm bid rule”, in relation to a bidder's request to withdraw a bid.</p> <p>A bid may be modified or withdrawn by written or telegraphic notice prior to the exact time set for opening. The "firm bid rule" generally precludes a bidder from withdrawing the bid between bid opening and the expiration of the bid acceptance period.</p>	

TOPIC: 7.2.2 TIME EXTENSIONS FOR BIDS**Ref.** Pages 7-24 and 7-25**Objective:** When you finish Section 7.2.2, the students must be able to:

- Define the “bid acceptance” period.
- Identify alternative ways in which this period is determined.

Time: 1:05 — 5 Minutes**Method:** Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define the term “bid acceptance period”</p> <p>The date specified by the bidder on which the bid expires. After that date, the bidder no longer has to honor the bid.</p> <p>b. Who determines the “bid acceptance period”?</p> <p>Ordinarily, the bidder is free to establish any period to its liking on the bid. However, sometimes the Government establishes a “minimum” bid acceptance period in the IFB.</p> <p>c. Question: What if the CO cannot award the contract within the acceptance period of the low bid?</p> <p>Answer: If the Government does not award the contract within the acceptance period, the bid is no longer valid. This requires that the Government award the contract as quickly as possible, or request bidders to extend their bid acceptance periods.</p>	

TOPIC: 7.2.3 LATE BIDS

Ref. Page 7-25




Objective: When you finish Section 7.2.3, the students must be able to:

- Define “late bids.”
- Identify circumstances under which a late bid can be considered.

Time: 1:10 — 10 Minutes

Method: Lecture

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Question: A bidder arrives in the bid room seconds after the bid opening officer has started to open bids. If it is 10% lower than any other bid, can it be considered? [Solicit answers from the class before providing your own]</p> <p>Answer: No—it is late.</p>	
	<p>b. Question: What if that bidder had a flat tire on the way to the bid opening? [Solicit answers from the class before providing your own]</p> <p>Answer: No—the bid would be late.</p> <p>c. Define late bids.</p> <p>Bids received after the exact time set for opening of bids, in the office designated in the IFB.</p>	
	<p>d. Question: Can COs ever consider a late bid ? [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. Examples from FAR 14.304-1(a):</p> <ul style="list-style-type: none"> • If sent by registered or certified mail not later than five calendar days before the specified bid receipt date. • If sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee not later than 5:00 PM at the place of mailing 2 working days prior to the date specified for receipt of bids. • If sent by mail, and late receipt was due solely to mishandling by the Government after receipt at the Government installation. 	

 **TOPIC: 7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS**

Ref. Pages 7-25 to 7-28

Objective: When you finish Section 7.2.1.4, the students must be able to:

- List the two basic steps in price analysis.
- Define “fair and reasonable” price and present an example of a price that would be considered unreasonable.
- State the CO's two options if prices are not reasonable.
- Define responsiveness.
- List examples of minor informalities and irregularities.





Time: 1:20 — 40 Minutes

Method: Lecture/Discussion and Group Exercise

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Identify the two basic steps in price analysis.</p> <ol style="list-style-type: none"> 1. Identifying the low bid or bids. 2. Determining whether the low bid is fair and reasonable. <p>b. Identify the process for calculating the low bid or bids.</p> <ul style="list-style-type: none"> • Apply price-related factors to identify the “evaluated” price of each bid. • Compare the “evaluated” prices. • Identify the low bid for each potential award. • Where necessary, use FAR tiebreakers: <ol style="list-style-type: none"> 1st. Small business concern in a labor surplus area. 2nd. Small business concerns. 3rd. Labor surplus area concerns. 4th. Drawing by lot. <p>c. Describe factors in determining whether a price is fair and reasonable, such as:</p> <ul style="list-style-type: none"> • Market trends and conditions. • Amount of competition. • Prices paid in comparable acquisitions. 	


TOPIC: 7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Question: Suppose 3 retail outlets have bid per unit prices of \$300, \$341, and \$489 for 1,000 copies of word processing software. Is \$300 a fair and reasonable price? [Solicit answers from the class before providing your own]</p> <p>Answer: Perhaps.</p>	
	<p>e. Question: Now suppose I tell you that mail order houses, none of which bid, offer the same brands of software in their published catalogs at \$210 - \$245 per unit. Do you still think that \$300 per unit is a fair and reasonable price? [Solicit answers from the class before providing your own]</p> <p>Answer: No.</p>	
	<p>f. Question: What are the CO's options if the price appears unreasonably high? [Solicit answers from the class before providing your own]</p> <p>Answer: Cancel and either negotiate or resolicit (see Section 7.1.2.5)</p>	
Page 7-22	<p>g. Lead the students through reasons for cancellation after opening on page 7-22 of the text/reference.</p>	
	<p>h. Question: What are the CO's options if the price appears unreasonably low? [Solicit answers from the class before providing your own]</p> <p>Answer: Verify the bid—which we will discuss at Section 7.4.1.1.</p> <p>i. Transition—State that, once the CO has identified the low bid and determined that it is fair and reasonable, the next question is whether that bid is responsive.</p>	

TOPIC: 7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>j. Define the term “Responsive Bid” and state the CO's only option if a bid is nonresponsive.</p> <p>“A responsive bid is one that conforms to the essential requirements of the IFB.” If a bid is nonresponsive, the CO must reject it.</p> <p>k. Describe “minor informalities and irregularities.”</p> <p>These are immaterial defects that can be corrected or waived without being prejudicial to the other bidders. Examples are listed at FAR 14.405.</p>	
<div data-bbox="285 751 367 831" data-label="Image"></div>	<p>1. Question: A CO is trying to determine whether or not the lowest bid is responsive to the solicitation.</p> <p>Firm A bid \$100,000 but took exception to the delivery date—A promises delivery on October 2, although the IFB calls for delivery on September 30.</p> <p>Firm B bid \$180,000 but failed to furnish the "Contingent Fee Representation and Agreement."</p> <p>Firm C bid \$190,000 and did not vary in any respect from the terms and conditions in the IFB.</p> <p>Assuming the bidders are all responsible and that the bids are equal in all other respects, who wins? [Solicit answers from the class before providing your own]</p> <p>Answer: Firm B. Bid A is nonresponsive; once a bid is nonresponsive it cannot be made responsive. Bid B, the next lowest bid, suffers from a “minor informality.” If Firm B provides the missing representation, it will be awarded the contract.</p>	

TOPIC: 7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	m. Ask the students to read pages 7-25 through 7-28 in the text. Ask the students also to read the the Bid Evaluation Exercise on page CM 7-19.	
	n. Break the students into their groups and have the groups attempt to answer the question posed by the Exercise.	

BID EVALUATION EXERCISE

An IFB was issued for:

- Item 1: 1000 wooden pallets (size 56" X 56" X 8") to be used for storing and moving large quantities of paper for copy machines.
- Item 2: 100 steel stacking cages to be used for storing up to 10 empty pallets.
- The items must meet the specific requirements of the FED specifications attached to the IFB.
 - This is not a small business set-aside
 - All or none bids are permitted
 - Less than the total quantity of either item may be awarded
 - Separate awards may be made for each line item

Eight bids were received as follows:

Bidder	Size Status	Item 1--Price	Item 2--Price	Total
A	Big Business	\$65.00 each	\$112.00 each	\$76,200
B	Small Business	\$60.00 each	\$98.00 each	\$69,800
C	Small Business	\$55.00 each (500 Only)	No Bid	\$27,500
D	Big Business	No Bid	\$92.00 each	\$9,200
E*	Small Business	\$54.00 each	\$93.00 each	\$63,300
F	Big Business	\$59.00 each	\$90.00 each	\$68,000
G	Small Business	\$59.00 each	\$91.00 each	\$68,100
H**	Small Business	\$53.00 each	No Bid	\$53,000

* All or None

** Product meets all requirements except size is 57" X 56" X 8" and contractor requests this be considered a minor informality.

Identify the low, responsive bidder(s).

TOPIC: 7.2.4 BID PRICES & 7.2.5 RESPONSIVENESS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	o. Ask the class the identity of the low bidder. If any group has the right answer, have the spokesperson for that group present their calculations. If no group has the right answer, lead the class through the correct calculation.	

ANSWER SHEET FOR THE BID EVALUATION EXERCISE**Step 1:** Start with low bidder for Item #1

Bidder H = low--but non-responsive (although this may have been acceptably viewed as a minor irregularity if the 1" discrepancy made no difference to the stacking cages or any other material aspect of performance)

Bidder E = next low--but "All or None"--Compute Separately

Bidder C = next low--but limited to 500 $\$55.00 \times 500 = \$27,500$

Bidder F & G = tied for next low. G is small business. Use G— $\$59.00 \times 500 = \$29,500$

Step 2: Start with low bidder for Item #2

Bidder F is low-- $\$9,000 \times 100 = \$9,000$

Total for Award to C, G, and F (Items 1 & 2): \$66,000

Total plus allowance for multiple awards: $\$66,000 + 1,000 = \$67,000$

Note: When making multiple awards, the CO shall assume that the cost to the Government to award and administer each contract is \$500.00 (FAR 14.201-8). Accordingly, \$1,000.00 would be added to the combined bids of C, G, and F for comparison with the bid of E.

Step 3: Compute All or None

Bidder E = $\$54.00 \times 1000$ (Item 1) = \$54,000

$\$93.00 \times 100$ (Item 2) = \$9,300

Total \$63,300

ANSWER: AWARD TO BIDDER E


☞ Note that an alternative way of calculating the impact of multiple awards would have been by adding \$500 to Bid E and \$500 each to Bids C, G, and F (for a total of \$1,500 for comparison with All-or-None Bid E). Mathematically, the result is the same.

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>p. Recap of the Question for Section 7: “Which, if any, of the submitted bids should be considered for award?”</p> <p>Answer: Consider a bid for award which:</p> <ul style="list-style-type: none"> • Has not expired, • Was submitted on time, • Represents the lowest “evaluated” price, • Represents a “fair and reasonable” price, and • Is responsive to the terms and conditions of the IFB. <p>q. Ask the recorder to write the answer on page CM 7-3 of his/her book.</p>	

TOPIC: 7.3 EVALUATION (NEGOTIATION)**Ref:** Page 7-29**Objective:** When you finish Section 7.3, your students must be able to:

- Recognize a typical setting for evaluating proposals.
- State the basic business question.
- List the eight principal steps in evaluating proposals.

Time: Break before this lesson. Resume at 2:20 — 5 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 7-5 : Evaluation (Negotiation).	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
		Proposal Evaluation Processing Proposals Technical Evaluation Price Objectives Cost and Pricing Data Audits Cost Analysis Evaluation Other Terms and Conditions Competitive Range Discussions Factfinding Negotiation Strategy Conducting Negotiations	

VG 7-5

TOPIC: 7.3 EVALUATION (NEGOTIATION) (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Present the Setting:</p> <p>“The Setting: Strong Jones has issued the RFP. Mark Smith has volunteered to serve as the technical evaluator. The closing date is fast approaching.”</p> <p>c. Present the Basic Business Question:</p> <p>“Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?”</p> <p>d. List the steps:</p> <ol style="list-style-type: none"> 1. Process and open the proposals. 2. Obtain an evaluation of the technical proposal. 3. Establish a prenegotiation position on price. 4. Where necessary, obtain cost and pricing data from the offeror. 5. Where necessary, request an audit of the cost and pricing data. 6. Prepare prenegotiation positions on elements of cost. 7. Evaluate and establish prenegotiation positions on other terms and conditions. 8. Determine the competitive range. 	

TOPIC: 7.3.1.1 PROCESSING PROPOSALS**Ref.** Page 7-30**Objective:** When you finish Section 7.3.1.1, the students must be able to describe:

- Initial steps in receiving and opening proposals.

Time: 2:25 — 5 Minutes**Method:** Lecture

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the CO's initial steps in processing proposals:</p> <ul style="list-style-type: none"> • Before the closing date, proposals are secured, unopened, in a locked file. • After the closing date, the CO privately opens and records the proposals. • CO compares proposals with the requirements of the RFP to identify any variances from the RFP's terms (which may require discussion). • Technical proposals are forwarded to technical evaluators. • Price proposals might be assigned to Price/ Cost Analysts. • If field pricing support or an audit is required, a copy of the RFP and proposal will be furnished to the cognizant activity. 	

TOPIC: 7.3.1.2 TECHNICAL EVALUATION



Ref. Pages 7-30 to 7-31

Objective: When you finish Section 7.3.1.2, the students must be able to describe:

- Reasons for technical evaluation.

Time: 2:30 — 10 Minutes


Method: Lecture/Discussion and Roleplay

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present reasons for requesting a technical evaluation.</p> <ul style="list-style-type: none">• To ensure understanding of the requirement.• To establish the competitive range.• To rank proposals on the basis of technical factors and to justify the rankings.• To provide data on the proposed labor mix, hours of direct labor, material mix, material quantities, etc., to support the CO's analysis of proposed costs.• To identify technical negotiation objectives and the need for factfinding.• To prepare the agenda for discussions with the offerors.	
	<p>b. Question: Upon opening a proposal, what documents will Jones share with Mark Smith? [Solicit answers from the class before providing your own]</p> <p>Answer: Jones will provide Mark Smith with:</p> <ul style="list-style-type: none">• The Schedule from the RFP.• Evaluation factors in Section M of the RFP, along with any special standards of responsibility.• Instructions for proposal preparation in Section L.• The offeror's technical proposal.	
	<p>c. Transition—While Jones awaits Mark Smith's report, Jones has picked up a copy of the report from Prudent Jackson, the Price Analyst.</p>	


TOPIC: 7.3.1.3 PRICE OBJECTIVES**Ref.** Page 7-32**Objective:** When you finish Section 7.3.1.3, the students must be able to:

- Distinguish price analysis for the purposes of negotiated acquisitions from price analysis for the purposes of sealed bidding.

Time: 2:40 — 10 Minutes**Method:** Lecture/Discussion and Roleplay

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Question: “How does price analysis in negotiated procurements differ from price analysis in sealed bidding?” [Solicit answers from the class before providing your own]</p> <p>Answer: In both cases:</p> <ul style="list-style-type: none"> • Prices must be evaluated against price-related factors, and • Prices must be compared against other data to determine whether they are fair and reasonable. <p>The difference involves the decisions made on the basis of price analysis. In negotiated acquisitions, price analysis is the basis for decisions on:</p> <ul style="list-style-type: none"> • The need for discussions (i.e., can award be made without discussions?). • The competitive range. • Negotiation objectives—especially in terms of tradeoffs between price and other terms and conditions. <p>Moreover, if the CO cannot otherwise determine whether the prices are reasonable, the CO can request cost breakdowns to verify the realism of proposed costs and overall reasonableness of the proposed price.</p>	

TOPIC: 7.3.1.3 PRICE OBJECTIVES (CON'T)



Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Have the students read pages 7-32 to 7-35 in the text.</p> <p>c. Ask the student playing Prudent Jackson, Price Analyst, to read Roleplay #3 on page CM 7-21</p>	

Roleplay #3 (CM 7-21)

Jackson: We received only one offer—from CLEANCO. That offer is \$4,500,640—\$1,500,640 higher than the Government estimate of \$3,000,000 per smokestack.

I called the other four known prospective offerors (SHACKELFORD, SCRUBBCO, BLAST, and SNUFF-IT). All declined to submit proposals because their plants are overbooked.








If we are going to negotiate with CLEANCO, the first step will be to obtain cost and pricing data.

	<p>d. Question: “Even though the RFP did not require cost and pricing data, can Strong Jones request a cost breakdown from CLEANCO now?” [Solicit answers from the class before providing your own]</p> <p>Answer: FAR 15.804-6(a) states that “Even if the solicitation does not so specify, the contracting officer is not precluded from requesting [cost or pricing] data ... if they are later found necessary.”</p>	
	<p>e. Question: “If cost and pricing data are obtained from CLEANCO, should Mark Smith be invited to review some of the data?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes—Such data as proposed tasks, the labor mix and hours per task, and the proposed mix and quantities of materials. However, the actual dollar figures should not be passed to Smith.</p>	

TOPIC: 7.3.1.4 COST AND PRICING DATA**Ref.** Pages 7-32 to 7-33**Objective:** When you finish Section 7.3.1.4, the students must be able to:

- Identify circumstances under which an offeror is required to certify cost and pricing data.

Time: 2:50 — 10 Minutes**Method:** Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
 	<p>a. Question: “When is an offeror required to certify cost or pricing data?” [Solicit answers from the class before providing your own]</p> <p>Answer: When (1) the costs are likely to exceed \$100,000 and (2) the Government cannot determine the reasonableness of proposed prices without such data.</p> <p>Point out that offerors generally do have have to submit certified data when the award price is based on:</p> <ul style="list-style-type: none"> • Law or regulation, • Adequate price competition, or • Established catalog or market prices for commercial items sold in substantial quantities to the general public. <p><i>For DoD and other title 10 agencies, the threshold is now \$500,000 . Notwithstanding rumors to the contrary, the threshold is still \$100,000 for most civilian agencies.</i></p> 	
 	<p>b. Question: “What does the offeror certify?” [Solicit answers from the class before providing your own]</p> <p>Answer: That the data are accurate, complete, and current as of the date on which price negotiations were concluded and price agreement was reached.</p>	
 	<p>c. Question: “Should CLEANCO be required to certify the cost breakdown requested by Strong Jones?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. Because (1) the costs at issue exceed \$100,000 and (2) competition was not adequate.</p>	

TOPIC: 7.3.1.5 AUDITS


Ref. Pages 7-33 to 7-34

Objective: When you finish Section 7.3.1.5, the students must be able to:

- Provide examples of issues addressed in audit reports.

Time: 3:00 — 5 Minutes


Method: Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Describe audit reports.</p> <p>Auditors report such things as:</p> <ul style="list-style-type: none">• The firm's basis and method for estimating costs.• The accuracy, completeness, and currency of submitted cost or pricing data.• Additional cost or pricing data of relevance to the proposal.• The dollar impact of technical analyses received by the auditor.• The adequacy of the offeror's estimating methods and accounting systems.	
<div></div>	<p>b. Question: “Should Strong Jones request an audit of CLEANCO's cost and pricing data?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. Large amounts of money are at issue—well in excess of the FAR \$500,000 threshold for considering an audit. Plus, the Market Report gave no hint of any prior audit findings on CLEANCO.</p>	



TOPIC: 7.3.1.6 COST ANALYSIS**Ref.** Pages 7-34 to 7-35**Objective:** When you finish Section 7.3.1.6, the students must be able to:

- Define cost analysis.
- Describe typical elements of cost that might be analyzed.
- Identify the central issue in cost analysis.
- Recognize examples of "cost drivers".

Time: 3:05 — 25 Minutes**Method:** Lecture/Discussion and Group Exercise

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define cost analysis.</p> <p>The review and evaluation of the separate cost elements and proposed profit stated in an offeror's proposal.</p> <p>b. List typical elements of cost.</p> <ul style="list-style-type: none"> • Direct materials (quantity and price). • Direct labor (quantity and rates). • Indirect costs (e.g., Overhead and General and Administrative). • Subcontracts. • Other direct costs (e.g., Travel and Royalties). • Profit or fee. 	
	<p>c. Question: "What is the central issue in cost analysis?" [Solicit answers from the class before providing your own]</p> <p>Answer: Whether the proposed costs are realistic and otherwise allowable (see Chapter 8, Exhibit 8-12).</p> <p>Caution the students against preoccupation with any one element of cost or believing that an agreement must be reached on every individual element.</p> <p>In negotiated procurements, the ultimate goal is an agreement on an overall price and related terms and conditions (e.g., contract type) that, <u>taken as a whole</u>, is fair and reasonable to both parties.</p>	

TOPIC: 7.3.1.6 COST ANALYSIS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
 	<p>d. Ask students to read the cost analysis report prepared by Prudent Jackson—starting on page CM 7-22. As they read this report, ask the students to list reasons why CLEANCO has proposed a much higher price than the Government estimate.</p>	

Analysis of CLEANCO'S Proposal for Upgrading Pollution Control Equipment at the Smoketown Plant (CM 7-22)

Prepared by Prudent Jackson, Esq.

 **THE CLEANCO PROPOSAL (SUMMARY)**

COST ELEMENTS	CLEANCO'S ESTIMATE (PER SMOKESTACK)
Materials	\$1,263,600
Direct Labor	\$1,200,000
Indirect Costs	\$1,200,000
Other Costs	\$250,000
Subtotal	\$3,913,600
Fee	\$587,040
Total	\$4,500,640

SUMMARY OF PRINCIPAL FINDINGS OF THE TECHNICAL ANALYSIS

- The technical analysis supports the proposed material mix, quantities, and scrap rates.
- The technical analysis does not support proposed engineering hours and recommends a 16% reduction in same.
- The technical analysis recommends reducing proposed carpentry and electrician labor by 300 hours, while adding that same amount to proposed hours for general labor.

SUMMARY OF PRINCIPAL AUDIT FINDINGS

- The audit does not support the estimates of wage rates and direct material unit prices. The proposed wage rates and unit prices are 15% and 25% higher, respectively, than can be supported by actual outlays by the firms as of this date.
- The audit, on the other hand, documents recent inflation in wage rates and direct material unit prices. Wages paid by CLEANCO have increased by 10-15% over the last three months. Invoiced unit prices for chemicals rose by 40-57% in that same period.
- The audit does not support the proposed indirect cost rate, which is figured as a percentage of direct labor costs. CLEANCO proposes a rate of 100%, based on historic average plant utilization. However, the audit only supports a rate of 92%, resulting from the fact that CLEANCO's plant is presently operating at full capacity.

CONCLUSIONS

The following are my recommendations for prenegotiation objectives by major element of cost.

COST ELEMENTS	PROPOSED CONTRACT ESTIMATE	RECOMMENDED
Materials	\$1,263,600	\$947,700
Direct Labor	\$1,200,000	\$840,000
Indirect Costs	\$1,200,000	\$772,800
Other Costs	\$250,000	\$220,000
Subtotal	\$3,913,600	\$2,780,500
Profit	\$587,040	\$278,050
Total	\$4,500,640	\$3,058,550

Materials

- CLEANCO based its estimate in part on projections of further spot shortages and continued rapid inflation in unit prices for critical chemicals and subassemblies during the next 18-24 months.
- Audit data offers some support for this assumption, in terms of trends in unit prices during the last several months.
- Demand is increasing for the upgrade kits and the market's capacity to meet that demand is limited.
- Nonetheless, CLEANCO has not sufficiently supported the percentages by which it has projected future increases in unit prices.

- Hence, as an opening position, recommended material costs have been reduced from the proposed costs to reflect current unit prices.

Direct Labor




- Recommended labor costs have been reduced from the proposed costs to reflect the above findings and recommendations from the technical analysis on engineering hours and the skilled labor mix for installation.
- In addition, recommended labor costs have been reduced from the proposed costs to reflect current audited wage rates. CLEANCO has not sufficiently justified its assumption that the current wage rates, which are mostly locked in by current employment contracts, are going to continue to rise.

Indirect Rates:

- Based on audit findings, indirect rates are figured at 92% of direct labor costs, rather than the proposed 100%.

Profit:

- CLEANCO predicates its price on a profit rate of 15%.
- My analysis, attached, only supports a profit rate of 10%.

Ref.	Steps In Presenting The Topic	Instructor Notes
  	<p>e. Question: “What is CLEANCO's price so much higher than the Government estimate?” [Solicit answers from the class before providing your own. Record answers on the flipchart]</p> <p>Primary factor: Cleanco is worried about rapidly escalating labor rates and prices for critical raw materials and subcomponents.</p>	



BREAK FOR THE DAY.

ASSIGN CHAPTER 8 IN THE TEXT/REFERENCE AS THE NIGHT'S READING.

TOPIC: 7.3.1.7 EVALUATING OTHER TERMS AND CONDITIONS**Ref.** Page 7-35**Objective:** When you finish Section 7.3.1.7, the students must be able to:

- Identify terms and conditions other than the SOW and price that may be the subject of negotiations.

Time: 8:00 — 10 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Identify examples of terms and conditions other than the SOW and price that may be put on the table either by the CO or the offeror during discussions.</p> <ul style="list-style-type: none"> • Use of a different type of contract than solicited • Provision of financing or a different type of financing than contemplated in the RFP. • Furnishing property for the contract • Leasing rather than purchasing • Extending the proposed delivery schedule 	
	<p>b. Question: “If you were Strong Jones, which of these issues would you bring to the table, if any?” [Solicit answers from the class before providing your own]</p> <p>Answer: Type of Contract. Switching to an FP-EPA contract might be the tradeoff for persuading the CLEANCO to peg its material cost estimates to current prices.</p>	
	<p>c. Ask the students playing Strong Jones and Prudent Jackson, Price Analyst, to read Roleplay #4 on page CM 7-24</p>	

7.3.1.7 EVALUATING OTHER TERMS AND CONDITIONS (CON'T)

Roleplay #4 (CM 7-24)

Jones:

Things look bad on the CLEANCO contract. I entered into discussions, but CLEANCO's representatives informed me that their offer was on a "take it or leave it basis". I gave them a deadline for submitting a "best and final" proposal, and the deadline has passed with no response.

Jackson:

I may have a solution for you. In the past several weeks, I have received phone calls from several of the prospective offerors that did not submit proposals. They report that EPA has cancelled grants to State and local Governments for pollution control equipment. Consequently, some of their contracts with State and local Governments have been cancelled. SCRUBBCO and SHACKELFORD are now ready to do business with us. I have reason to believe that other of the prospective offerors may also be in the same boat.




d. **Question:** "If you were Strong Jones, what would you do upon hearing this report from Jackson?"
[Solicit answers from the class before announcing the decision made by Jones.]

e. The decision by Strong Jones: Cancel and resolicit.* Why?

- The great disparity between CLEANCO's price per smokestack vs. the Government estimate. Whereas Smith had expected to pay \$9,000,000 for all three smokestacks, taken together, CLEANCO's opening proposal is \$13,501,920.
- The likelihood, given the apparent drop in demand, of obtaining far more competitive prices by resoliciting.
- The fact that Mark Smith is partial to a tradeoff between cost and timeliness, mainly because Smith would be hardpressed to find the extra millions that would apparently be necessary to fund the contract with CLEANCO as things now stand.

* Note—such decisions have been upheld by the Comptroller General. See, for instance, B-235208 (August 9, 1989) and 237531.3 (August 17, 1990). In both cases, the Comptroller General affirmed that an agency may cancel a negotiated procurement based on the potential for increased competition or cost savings.

7.3.1.7 EVALUATING OTHER TERMS AND CONDITIONS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	f. Inform the class that, in resoliciting, Jones used Firm Fixed Price with Economic Price Adjustment terms.	
	g. Record the new price proposals (per smokestack) on the flipchart, as follows—	
	SNUFF-IT: \$3,100,000	
	SHACKELFORD: \$3,300,000	
	BLAST: \$3,350,000	
	CLEANCO: \$3,500,000	
	SCRUBBCO: \$5,200,140	
	h. Transition —Inform the class that the proposals were analyzed, both on price-related and technical grounds. Mark Smith reported that SCRUBBCO's technical approach has no chance of meeting the EPA standards.	

TOPIC: 7.3.1.8 COMPETITIVE RANGE

Ref. Pages 7-35 to 7-36



Objective: When you finish Section 7.3.1.8, the students must be able to:

- Describe the competitive range.


Time: 8:10 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define “competitive range.”</p> <p>The competitive range includes all proposals that will be discussed with offerors. CO's establish the range on the basis of technical evaluation factors and price.</p> <p>Only include offers in the competitive range that have a reasonable chance of being selected for award.</p>	
	<p>b. Question: “Does Strong Jones have good reason, at this time, to remove any proposals from the competitive range?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. SCRUBBCO's.</p>	
	<p>c. Question: “How would Strong Jones remove SCRUBBCO's proposal from the competitive range?” [Solicit answers from the class before providing your own]</p> <p>Answer: By sending SCRUBBCO a written notice.</p>	

TOPIC: 7.3.1.8 COMPETITIVE RANGE (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Recap of the Question for Section 7.3.1: “Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?”</p> <p>Answer: Four proposals remain in the competitive range. Potential issues for discussions with those offerors:</p> <p>Issue 1. Any technical deficiencies and concerns, in terms of meeting the EPA standards .</p> <p>Issue 2. Any variance from business terms and conditions (e.g., the proposed delivery schedule) between the RFP and the proposals.</p> <p>Issue 3. The potential impact on proposed prices of changes in the work design and business terms and conditions.</p> <p>Issue 4. The overall reasonableness of proposed prices, in view of the Market Report and Government estimate that supports prices in the range of \$3,000,000 per smokestack.</p> <p>e. Ask the recorder to write the answer on page CM 7-3 of his/her book; provide the recorder with the page from the flipchart.</p>	

TOPIC: 7.3.2 DISCUSSIONS

Ref. Page 7-36

Objective: When you finish Section 7.3.2, the students must be able to:

- Recognize a typical setting for discussions.
- State the basic business question.
- List the three principal steps in discussing proposals.

Time: 8:20 — 5 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“Strong Jones has completed the initial analysis of proposals in the competitive range.”</p> <p>b. Present the Basic Business Question:</p> <p>“What strategies and tactics will you employ in discussing proposals with offerors?”</p> <p>c. List the steps:</p> <ol style="list-style-type: none">1. Conduct any necessary factfinding to complete analysis of the proposals.2. Prepare the strategy for conducting negotiations.3. Conduct discussions with representatives of the offeror.	

TOPIC: 7.3.2.1 FACTFINDING**Ref.** Page 7-36**Objective:** When you finish Section 7.3.2.1, the students must be able to:

- Define factfinding.
- Distinguish factfinding from negotiations.

Time: 8:25 — 5 Minutes**Method:** Lecture

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define factfinding .</p> <p>The process of identifying and obtaining information from the offeror necessary to complete the evaluation of the offeror's proposal. The focus is on clarifying proposals, not on bargaining.</p> <p>b. Based on factfinding, the CO might:.</p> <ul style="list-style-type: none"> • Revise prenegotiation objectives. • Eliminate the proposal from the competitive range. • Set up another round of factfinding. <p>c. Distinguish factfinding from negotiation.</p> <p>Factfinding's goal is to clarify proposals, not bargaining. CO's must ensure that factfinding sessions do not turn into negotiations, especially if the CO has not yet had a chance to develop a strategy for the negotiations.</p>	

TOPIC: 7.3.2.2 NEGOTIATION STRATEGY

Ref. Page 7-37

Objective: When you finish Section 7.3.2.2, the students must be able to:

- Identify typical steps in preparing for negotiations.
- Identify typical elements of a strategy for accomplishing negotiation objectives.

Time: 8:30 — 10 Minutes

Method: Lecture

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present steps in preparing for negotiations.</p> <ul style="list-style-type: none">• Identify best case vs. worst case positions for each prenegotiation objective.• Identify the relative and absolute priority of each objective.• Develop an overall strategy for accomplishing the Government's highest priority objectives.• Research the offeror's negotiation style and likely strategy.• Prepare a prenegotiation plan.• Brief management on the plan.• Review and rehearse the plan with the Government's negotiation team.• Prepare the negotiation agenda. <p>b. Identify typical elements of a negotiation strategy.</p> <ul style="list-style-type: none">• Opening positions.• Planned counteroffers.• Potential exchanges of concessions and tradeoffs.• Specific tactics (which to employ and when). <p>c. Describe typical elements of a negotiation plan.</p> <ul style="list-style-type: none">• Target objectives.• Major issues and concerns.• Summary of the strategy.• Team members and roles.• Schedule.	



TOPIC: 7.3.2.3 CONDUCTING NEGOTIATIONS**Ref.** Pages 7-37 to 7-39**Objective:** When you finish Section 7.3.2.3, the students must be able to:

- Define negotiation.
- Identify the basic steps in negotiating sole source agreements.
- Identify the basic steps in competitive negotiations.
- List some of the "don'ts" when conducting negotiations on behalf of the Government.

Time: 8:40 — 20 Minutes**Method:** Lecture

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define negotiation.</p> <p>Negotiation means bargaining. Both parties, the Government and the offeror, establish their objectives and enter into the negotiations with the expectation of bargaining to achieve those objectives.</p> <p>Both negotiation teams have a leader, with the CO as the Government leader.</p> <p>b. Present some typical (and acceptable) tactics.</p> <ul style="list-style-type: none"> • Questions. • Trial balloons (e.g., “what if?”) • Silence. • Casting the meeting as an exercise in problem-solving (win-win) approach. • Discussing issues in order of ease of agreement. • Hold major concessions for a “walk in the woods”—a separate meeting between lead negotiators. • Hold major concessions until the deadline is near. • Call caucuses and breaks. <p>c. Present the “don'ts” of conducting discussions.</p> <p>Lead the class through Exhibit 7-18 on page 7-39 of the text.</p>	

TOPIC: 7.3.2.3 CONDUCTING NEGOTIATIONS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes								
	<p>d. Describe the intended outcome of sole source negotiations:</p> <p>Acceptance of a final offer from the offeror. However, the CO is not obliged to accept the final offer on the table if that offer is not fair and reasonable.</p> <p>e. Describe the intended outcome of competitive negotiations:</p> <p>Request from the CO for the offeror's Best and Final Offer. The CO will compare this BAFO with those of other firms in the competitive range to recommend an offeror for award.</p> <p>f. Describe Price Negotiation Memoranda.</p> <p> g. Transition: “Strong Jones has received and analyzes the Best and Final Offers. After applying the RFP's evaluation factors, the following is the lineup of offers.” [Write the following information on the flipchart]</p> <table><tr><td>SHACKELFORD:</td><td>\$2,900,000</td></tr><tr><td>SNUFF-IT:</td><td>\$2,999,000</td></tr><tr><td>CLEANCO:</td><td>\$3,100,000</td></tr><tr><td>BLAST:</td><td>\$3,500,000</td></tr></table> <p>h. “Recap of the Question for Section 7.3.1: “What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?”</p> <p>Answer: “Jones prepared a prenegotiation plan which recommended a strategy and tactics. Based on that plan, Jones conducted discussions with offerors and then requested BAFOs. SHACKELFORD's BAFO is in line for award.”</p> <p> i. Ask the Recorder to record this answer.</p>	SHACKELFORD:	\$2,900,000	SNUFF-IT:	\$2,999,000	CLEANCO:	\$3,100,000	BLAST:	\$3,500,000	
SHACKELFORD:	\$2,900,000									
SNUFF-IT:	\$2,999,000									
CLEANCO:	\$3,100,000									
BLAST:	\$3,500,000									

TOPIC: 7.4 AWARD**Ref:** Page 7-40**Objective:** When you finish Section 7.4, your students must be able to:

- Recognize a typical setting for recommending award of a contract.
- State the basic business question.
- List the eight principal steps in evaluating proposals.

Time: 9:00 — 5 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 7-6 : Award	

Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
			Selection for Award Mistakes in Offers Responsibility Subcontracting Goals Preparing Awards Executing Awards Award Debriefing Protests Fraud and Exclusion

VG 7-6


TOPIC: 7.4 AWARD (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Present the Setting:</p> <p>“SHACKELFORD is in line for award.”</p> <p>c. Present the Basic Business Question:</p> <p>“Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?”</p> <p>d. List the steps:</p> <ol style="list-style-type: none">1. Resolve alleged mistakes.2. Determine the responsibility of the offeror in line for award.3. Obtain any required subcontracting plans and negotiate improvements in them.4. Prepare awards and obtain the necessary approvals.	

TOPIC: 7.4.1 .1 MISTAKES IN OFFERS**Ref.** Pages 7-41 to 7-42**Objective:** When you finish Section 7.4.1.1, the students must be able to:

- Describe two types of mistakes.
- Identify potential consequences of alleged mistakes.

Time: 9:05 — 10 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 7-25 	a. Define the two types of apparent mistakes that a CO might catch when reading offers. <ul style="list-style-type: none"> • Clerical mistakes, such as a missing decimal point. • Non-clerical mistakes, such as a price that is so much lower than other bids or your own estimate, based on market research, as to suggest the possibility of error. b. Show VG 7-7: Mistakes in Bids. Ask the class to call out anything that suggests that the bidder may have made a mistake in preparing its bid.	

MISTAKES IN BIDS—  Spot the mistakes in JJ's Bid

1. Line Item Price
- Bid A:**
 Type A Nails (50 lbs) \$12.00
 Type B Nails (50 lbs) \$1220
 Type C Nails (50 lbs) \$12.40
 Type D Nails (50 lbs) \$4.45*
- *Next low bid for Type D nails: \$20.19.
2. Discounts
- 1%/10 days, 2%/20 days, 5%/30 days
3. FOB Origin \$3.00
 FOB Dest. \$2.50

VG 7-7




Solicitation-Award Phase

Answers to VG 7-7:



Item 1: Type B appears to be missing a decimal point. Contractor would have to provide evidence (e.g., worksheets, vendor quotes) to correct mistake. For Type D, the bid appears to be a non-clerical mistake.

Item 2: Discounts are reversed.

Item 3: FOB Origin and FOB Dest. are reversed.

	<p>c. Question: “What should the CO do with Bid A?” [Solicit answers from the class before providing your own]</p> <p>Answer: Call the vendor and ask the vendor to verify the Bid.</p>	
	<p>d. Question: “If Bidder A admits to the clerical mistakes, what should the CO do?” [Solicit answers from the class before providing your own]</p> <p>Answer: Obtain written verification of the mistakes from the bidder and correct the bid by attaching the written verification to the bid.</p>	
	<p>e. Question: “The bidder alleges that the bid of \$4.45 for Type D nails is a mistake—that the bid should have been \$20.18. What should the CO do?” [Solicit answers from the class before providing your own]</p> <p>Answer: Instruct the bidder to (1) allege the mistake in writing and (2) request withdrawal or correction of the bid. Also notify the bidder that the allegation must be supported by such evidence as:</p> <ul style="list-style-type: none">• Certified copies of work papers and other data used in preparing the bid.• Copies of subcontractor and supplier quotes.• Published price lists. <p>Based in part on whether the Bidder A meets its burden of proving that a mistake was made and that the intended bid was \$20.18, the CO might (1) permit correction, (2) permit withdrawal, or (3) award the contract at the price of \$4.45. The FAR establishes precise rules for determining which option applies.</p>	

TOPIC: 7.4.1.1 MISTAKES IN OFFERS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: “If the CO had discovered such apparent mistakes in a proposal, what would the CO do?” [Solicit answers from the class before providing your own]</p> <p>Answer: Put them on the table as part of the negotiations.</p>	
	<p>g. Question: “Suppose the offeror waits until after award to allege that it erred in offering Type D nails at \$4.45 per 50 pounds. What will the CO do in that case?” [Solicit answers from the class before providing your own]</p> <p>Answer: The FAR establishes precise rules for responding to such allegations. These rules are the same regardless of the method of procurement.</p> <p>Step 1: The offeror must supply evidence (1) that a mistake was made and (2) that the mistake was mutual or “so apparent as to have charged the CO with notice of the probability of the mistake.”</p> <p>Step 2: The CO must determine whether the offeror met the burden of proof in step 1. If not, the contract stands at \$4.45 per 50 pounds.</p> <p>Step 3: If the offeror meets its burden of proof, the CO might (1) rescind the contract and resolicit or (2) reform the contract to reflect the intended price. The FAR establishes precise rules for determining which option applies.</p> <p>h. Inform the class that none of the offerors in the competitive range have alleged any mistakes in their offers.</p>	

TOPIC: 7.4.1 .2 RESPONSIBILITY

Ref. Pages 7-43 to 7-44


Objective: When you finish Section 7.4.1.2, the students must be able to:

- List the general standards of responsibility.
- Describe the "List of Parties Excluded from Government Procurement Programs".
- State why it is important to award only to responsible offerors.

Time: 9:15 — 25 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define responsibility.</p> <p>To be considered responsible, an offeror must:</p> <ul style="list-style-type: none"> • Have adequate financial resources to perform the contract, or the ability to obtain them. • Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments. • Have a satisfactory performance record. • Have a satisfactory record of integrity and business ethics. • Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them. • Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. • Be otherwise qualified and eligible to receive an award under applicable laws and regulations. • Meet any special standards stated in the solicitation 	
	<p>b. Question: “The FAR requires that contracts be awarded only to responsible offerors. Why?” [Solicit answers from the class before providing your own]</p> <p>Answer: Awarding solely on the basis of price can be false economy if there is substantial risk of subsequent default, late deliveries, or unsatisfactory quality, or any other major breach of the contract's terms and conditions.</p>	

TOPIC: 7.4.1 .2 RESPONSIBILITY (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="289 436 370 520">?</div> <div data-bbox="289 1066 370 1150">?</div> <div data-bbox="289 1444 370 1528">?</div> <div data-bbox="289 1554 347 1621">CM 7-26</div>	<p data-bbox="391 327 1114 401">c. Stress that the burden of proof is on the contractor to affirm its responsibility.</p> <p data-bbox="391 438 1073 548">d. Question: “Who decides whether or not the offeror is responsible?” [Solicit answers from the class before providing your own]</p> <p data-bbox="440 567 1130 737">Answer: In most cases, the CO. However, SBA reserves the right to determine the responsibility of small business concerns. If, despite CO's concerns, SBA decides that a small business concern is responsible, SBA issues a Certificate of Competency.</p> <p data-bbox="440 753 1122 821">Note, however, that COs may determine that a small business is nonresponsible without consulting SBA if:</p> <ul data-bbox="451 825 1105 1031" style="list-style-type: none"> • The small business is not qualified and eligible to receive an award under applicable laws or regulations (e.g., has violated the Clean Air Act) or • The small business is on the “List of Parties Excluded from Government Procurement Programs.” <p data-bbox="391 1068 1117 1213">e. Question: “What is the “List of Parties Excluded from Government Procurement Programs.”?” [Solicit answers from the class before providing your own]</p> <p data-bbox="440 1232 1125 1402">Answer: This document lists firms that have been suspended, proposed for debarment, debarred, or otherwise declared ineligible. COs check this list prior to making award, and no award may be made to a firm on the list.</p> <p data-bbox="391 1440 1105 1623">f. Question: “Read the Strong Jones memo for the record on page CM 7-26. Has SHACKELFORD affirmed its responsibility? If not, what general standard or standards are at issue?” [Solicit answers from the class before providing your own]</p>	

Solicitation-Award Phase

MEMORANDUM FOR THE RECORD

FROM: STRONG JONES

SUBJ: SHACKELFORD

I requested data from SHACKELFORD on Federal contracts that it had been awarded during the past five years. SHACKELFORD identified five such contracts. I called the contracting officers. One contracting officer stated that SHACKELFORD had rendered satisfactory performance.

The others reported that, on all four contracts,

- ☞ (1) SHACKELFORD delivered 6-9 months **late**.
- (2) The CORs rejected every initial deliverable.
- (3) At least one cure notice was sent to SHACKELFORD (in the worst case, five were sent).
- (4) SHACKELFORD corrected the work and, in consideration for late delivery, lowered the price.



These problems were presented to SHACKELFORD during discussions. SHACKELFORD blamed them on the fact that it's upgrade kit is state of the art and, at that time, was still being debugged. SHACKELFORD contends that these problems have now been resolved and that its more recent, private sector contracts have been trouble free.

However, within the past six months, SHACKELFORD's private sector customers have filed seventeen separate civil lawsuits against SHACKELFORD for breach of contract, alleging that SHACKELFORD upgrades are not satisfying contractual requirements for meeting the impending EPA standards.


On the other hand, SHACKELFORD has satisfied me that it:

- Has adequate financial resources, given the availability of progress payments.
- Notwithstanding its other contractual commitments, has sufficient plant capacity and staff at the ready to meet the delivery schedule.
- Has the necessary production facilities and equipment to make and install the upgrades.
- Is qualified and eligible to receive award under applicable laws and regulations.

TOPIC: 7.4.1 .2 RESPONSIBILITY (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 323 1105 432">g. Question: “Has SHACKELFORD affirmed its responsibility? If not, what general standard or standards are at issue?”</p> <p data-bbox="440 453 1073 516">Answer: No—SHACKELFORD has not met its burden of proof.</p> <ol data-bbox="451 527 1122 1104" style="list-style-type: none"> 1. SHACKELFORD's performance record is not satisfactory. FAR §9.104-3(c): “A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor’s control or that the contractor has taken appropriate corrective action.” 2. SHACKELFORD's has not affirmed that it has the technical skills to build upgrade kits that in fact meet EPA standards as promised. 3. SHACKELFORD's integrity is suspect—alleging in discussions that its latest private sector contracts have been troublefree when in fact 17 civil suits have been brought against it by those selfsame customers. 	
	<p data-bbox="391 1155 1114 1293">h. Question: “In view of SHACKELFORD's need for progress payments, can Jones in fact say that its financial resources are adequate?” [Solicit answers from the class before providing your own]</p> <p data-bbox="440 1314 1065 1409">Answer: Yes. The FAR at §32.107 states that a contractor's need for progress payments cannot be used as a factor in determining responsibility.</p>	

TOPIC: 7.4.1 .2 RESPONSIBILITY (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. Question: “If SHACKELFORD is nonresponsible, can award now be made to Snuff-It?” [Solicit answers from the class before providing your own]</p> <p>Answer: No. Snuff-It is not eligible for award because it is not a labor surplus area concern. Hence, it is not responsible under the General Standard at FAR §9.104-1(g)—“To be determined responsible, a prospective contractor must ... be otherwise qualified and eligible to receive an award under applicable laws and regulations.</p> <p>TRANSITION—The contractor now in line for award is CLEANCO.</p>	


TOPIC: 7.4.1 .3 SUBCONTRACTING GOALS**Ref.** Pages 7-44 to 7-45**Objective:** When you finish Section 7.4.1.3, the students must be able to:

- Define subcontracting plan.
- Identify circumstances under which a subcontracting plan must be obtained.

Time: Break before this lesson. Resume at 10:00 — 10 Minutes**Method:** Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. State the Government's socioeconomic goal for subcontracting:</p> <p>To provide subcontracting opportunities to small and small/disadvantaged business concerns.</p> <p>b. Describe subcontracting plans as a method of advancing this goal.</p> <p>Subcontracting plans are prepared by offerors and become a part of the contract. Such plans must, among other things, include:</p> <ul style="list-style-type: none"> • Percentage goals for subcontracting with small business concerns and small disadvantaged business concerns. • Procedures for providing small business concerns and small disadvantaged business concerns with equitable opportunities to compete for subcontracts. • Reporting requirements. • Recordkeeping requirements. <p>c. State the circumstances under which subcontracting plans are required:</p> <p>If the solicitation is for a contract expected to exceed \$500,000 (\$1,000,000 for construction) that has subcontracting possibilities, the IFB or RFP must require the apparently successful offeror to submit an acceptable subcontracting plan.</p> <p>There are a few exceptions to this requirement (most notably, for prime contractors that are small business concerns).</p>	


TOPIC: 7.4.1 .3 SUBCONTRACTING GOALS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. State the impact if the CO finds that the subcontracting plan is not acceptable.</p> <p style="padding-left: 40px;">In negotiated acquisitions, the CO may negotiate improvements to the plans during discussions with offerors in the competitive range. If the plan as finally submitted is not acceptable, the CO may not award to that offeror.</p> <p style="padding-left: 40px;">In sealed bidding, the CO may provide an opportunity for the bidder to resubmit the plan if it was incomplete. However, if the proposed subcontracting plan is not acceptable, the CO may not make award to that bidder.</p>	
	<p>e. Question: “Is CLEANCO required to submit an acceptable subcontracting plan as a condition for award?” [Solicit answers from the class before providing your own]</p> <p style="padding-left: 40px;">Answer: Yes. The award price exceeds the \$500,000 threshold.</p> <p>f. What can happen to CLEANCO if it later does not comply with the subcontracting plan?</p> <p style="padding-left: 40px;">Any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.</p>	

TOPIC: 7.4.1 .4 PREPARING AWARDS**Ref.** Pages 7-45 to 7-46**Objective:** When you finish Section 7.4.1.4, the students must be able to describe:

- Typical items on the CO's checklist for recommending award.
- The necessity for reverifying funds.
- Elements of the final contract.

Time: 8:40 — 10 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 7-27	a. Show VG 7-8: Preparing Awards. This is an interactive viewgraph that lists items for the CO to ensure before awarding the contract in sealed bidding and negotiation. Ask the class to determine whether each item applies to sealed bidding, negotiation, or both. The answers are located at the left in brackets.	

PREPARING AWARDS

1. Multiple awards, if applicable, were made correctly [BOTH]
2. The competitive range was fairly established [NEGOTIATION]
3. Score or rating has been determined according to the selection plan [NEGOTIATION]
4. Other factors stated in the RFP have been properly considered [NEGOTIATION]
5. Sufficient funds are available for obligation [BOTH]
6. All requirements of law, executive orders, regulations, and all other applicable procedures have been met [BOTH]

VG 7-8

TOPIC: 7.4.1 .4 PREPARING AWARDS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="142 323 224 405" data-label="Image"></div> <p>CM 6-7</p>	<p>b. Question: “If Strong Jones awards to CLEANCO, which test in VG 7-8 will she have skipped?” [Solicit answers from the class before providing your own]</p> <p>Answer: Verifying that sufficient funds are available for obligation. In its BAFO, CLEANCO priced the work at \$9,300,000. Mark Smith's PR has only committed \$9,000,000. Before Jones can make award, Smith is going to have to come up with another \$300,000.</p> <p>c. Question: “What would happen if Strong Jones awards to CLEANCO without getting an extra \$300,000 from Smith?” [Solicit answers from the class before providing your own]</p> <p>Answer: Jones would be personally liable for the \$300,000 under the Anti-Deficiency Act.</p> <p>d. Tell the students the next steps in awarding the contract.</p> <ol style="list-style-type: none"> Strong Jones will finalize the contract. <p>Contracts consist of the accepted offer (bid or BAFO), the Schedule (Part I of the UCF), Contract Clauses (Part II of the UCF), Attachments (Part III of the UCF), and any amendments to the IFB or RFP. In addition, the offeror's representations, certifications, and other statements are part of the resulting contract even though not physically attached to it.</p> <ol style="list-style-type: none"> Strong Jones will obtain all necessary clearances and approvals per the policies of that contracting activity. 	

TOPIC: 7.4.1 .4 PREPARING AWARDS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Recap of the Question for Section 7.4.1: “Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?”</p> <p>Answer: Jones has ruled that SHACKELFORD and SNUFF-IT are nonresponsible. In contrast, CLEANCO has been determined to be responsible, and CLEANCO's BAFO—partly due to the discussions—is free of any material defect. Jones has further confirmed that all required reviews and approvals have been secured and that the award process has been properly conducted. Hence, Jones has prepared an award document comprised of the original RFP, all amendments thereto, and CLEANCO's BAFO. However, before making award, Strong Jones has obtained another fund cite for \$300,000 from Mark Smith.</p> <p>f. Ask the recorder to write the answer on page CM 7-4 of his/her book.</p>	

TOPIC: 7.4.2 EXECUTING AWARDS

Ref. Page 7-46

Objective: When you finish Section 7.4.2, the students must be able to describe:

- Recognize a typical setting for executing contracts.
- State the basic business question.
- List the two principal steps in executing awards.

Time: 10:20 — 5 Minutes

Method: Lecture/Discussion




LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting: “The contract is ready for award.”</p> <p>b. Present the Basic Business Question: “How should the contract be executed and announced?”</p> <p>c. List the steps:</p> <ol style="list-style-type: none">1. Execute the award and notify interested parties.2. Debrief unsuccessful offerors, where required and as requested.	

TOPIC: 7.4.2.1 AWARD**Ref.** Pages 7-46 to 7-47**Objective:** When you finish Section 7.4.2.1, the students must be able to:

- State how contracts are executed.
- List parties typically notified of awards.

Time: 10:25 — 5 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Question: “How is a contract awarded?” [Solicit answers from the class before providing your own]</p> <p>Answer: By signing the contract itself or by issuing a Notice of Award. When the SF 33 is employed, the CO signs Block 27 in the subsection entitled AWARD. Only a duly appointed CO, acting within the scope of his or her authority, may sign a contract.</p>	
	<p>b. Question: “What is a bilateral award document, and when would this be necessary?” [Solicit answers from the class before providing your own]</p> <p>Answer: The SF 26 is a bilateral award document, used when an offer is changed. Both the offeror and the CO must sign it, thereby reflecting acceptance of the changed (new) offer.</p>	
	<p>c. Question: “Who is notified of the award?” [Solicit answers from the class before providing your own]</p> <p>Answer:</p> <ul style="list-style-type: none"> • Unsuccessful offerors • SBA, Labor, and other such Government agencies* • The public at large, through a CBD synopsis of the award and other announcements • The Federal Procurement Data System. 	

* Examples: SBA per FAR 19.705-6, when the contract contains a subcontracting plan; Labor per FAR 22.1017—when a service contract over \$25,000 has been awarded by an agency that does not report to the FPDS; EPA per FAR 23.106—when considering or making award to an offeror that the EPA is considering for listing as a violating facility under the Air or Water Acts.

TOPIC: 7.4.2.2 DEBRIEFING

Ref. Page 7-47

Objective: When you finish Section 7.4.2.2, the students must be able to describe:

- When a debriefing is required.
- The types of information that may be provided to unsuccessful offerors.

Time: 10:30 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Tell the class when COs must debrief an unsuccessful offerors (e.g., when—</p> <ul style="list-style-type: none"> • Award is based on technical and/or business management factors, • An offeror asks, in writing, for the debriefing. <p>b. Define “debriefing” .</p> <p>Debriefing is the process of telling unsuccessful offerors why their offers were deficient, by describing significant weak or deficient factors in the offeror's proposal.</p> <p>c. State the limits on what may be divulged.</p> <p>COs may not:</p> <ul style="list-style-type: none"> • Do point by point comparisons of the offer with other offers. • Reveal the relative merits or technical standing of competitors. • Reveal the evaluation scoring. • Reveal any information that may not be divulged under the FOIA (e.g., trade secrets). <p>d. Question: “Are SHACKELFORD and SCRUBBCO entitled to a debriefing, if they request such?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes.</p>	



TOPIC: 7.4.2.2 DEBRIEFING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 323 1117 394">e. Recap of the Question for Section 7.4.2: “How should the contract be executed and announced?”</p> <p data-bbox="440 415 1117 583">Answer: Jones has signed an SF26 to execute award to CLEANCO. Notice of the award has been published in the CBD and otherwise distributed as required. SCRUBBCO has requested a debriefing and been debriefed.</p> <p data-bbox="391 625 1101 690">f. Ask the recorder to write the answer on page CM 7-4 of his/her book.</p>	

TOPIC 7.4.3 PROTESTS

Ref. Pages 7-47 to 7-48

Objective: When you finish Section 7.4.3, the students must be able to:

- Recognize a typical setting for protests.
- State the basic business question.
- Define protest and describe its potential impact on the acquisition.
- Describe the CO's basic role in resolving protests.

Time: 10:40 — 20 Minutes

Method: Lecture and Group Exercise

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“The contract has been awarded to CLEANCO. But SCRUBBCO believes that it should have had an opportunity to participate in discussions—that it was unfairly excluded from the competitive range.”</p> <p>b. Present the Basic Business Question:</p> <p>“How can any protests of the award be resolved?”</p> <p>c. Define “protest.”</p> <p>A written objection by an interested party to a solicitation, proposed award, or the award.</p> <p>d. Define “interested party.”</p> <p>An actual or prospective offeror whose direct economic interest would be affected by the award of the contract, or by a failure to award a contract.</p>	

TOPIC: 7.4.3 PROTESTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Describe the CO's role in resolving protests.</p> <p>When possible, protests (or potential protests) should be discussed and resolved between the protestor and the CO. If the protestor wants to pursue the issue further, the protestor will file the protest with either the Comptroller General or—for ADP awards—to the General Services Board of Contract Appeals (GSBCA), as appropriate.</p> <p>When a protest is lodged with these forums, promptly supply any information required by GAO or the GSBCA; otherwise, the agency's case may be lost due to untimely responses.</p> <p>f. State the potential impact of a protest to GAO.</p> <p>With respect to protests to the Comptroller General, COs generally:</p> <ul style="list-style-type: none"> • Delay award, when notice of the protest arrives prior to award. • Suspend or terminate award, if the notice comes within 10 calendar days after award. <p>After reviewing the protest, the Comptroller General may recommend such actions as cancellation and resolicitation. The Comptroller General may also recommend paying the protestor's costs of:²</p> <ul style="list-style-type: none"> • Filing and pursuing the protest, including reasonable attorney fees, and • Bid or proposal preparation <p>g. Recap of the Question for Section 7: “How can any protests of the award be resolved?”</p> <p>Answer: After further discussions with SCRUBBCO, Jones has persuaded SCRUBBCO not to file a GAO protest.</p> <p>h. Ask the recorder to write the answer on page CM 7-4 of his/her book.</p>	

²FAC 90-6 changed the wording to read "recommend".

TOPIC 7.4.4 FRAUD

Ref. Page 7-49

Objective: When you finish Section 7.4.4, the students must be able to:



- Recognize a typical setting for reporting fraud.
- State the basic business question.
- Define protest and describe its potential impact on the acquisition.
- Describe the CO's basic role in resolving protests.

Time: 11:00 — 30 Minutes

Method: Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“Stuck by gum to one of the back pages of SHACKELFORD's proposal, Strong Jones has discovered a letter from SHACKELFORD's President to SCRUBBCO's President, suggesting that SCRUBBCO bid high on the Jones solicitation, in return for which SHACKELFORD would bid high on the upcoming smokestack upgrade at an Army power plant in Indiana.”</p> <p>b. Present the Basic Business Question:</p> <p>“Has there been any evidence of fraud or other misconduct in awarding the contract?”</p> <p>c. Define fraud.</p> <p>A felonious act of corruption, or an attempt to cheat the Government or corrupt its agents.</p> <p>Point out that those contractors found guilty of fraud, or those who have seriously violated the terms of a Government contract or subcontract, may be placed on the "List of Parties Excluded from Government Procurement Programs."</p>	

TOPIC: 7.4.4 FRAUD (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Identify potential indicators of fraud.</p> <ul style="list-style-type: none"> • False invoices • Phantom contractors • Falsification of Government Furnished Property records • Unbalanced bidding • Unfair labor practices 	
	<p>e. Question: “Is SHACKELFORD's letter to SCRUBBCO a potential indicator of fraud or other misconduct?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes.</p>	
	<p>f. Question: “What should Strong Jones do with SHACKELFORD's letter?” [Solicit answers from the class before providing your own]</p> <p>Answer: Forward it to the IG, along with information on the prices actually proposed.</p> <p>g. Recap of the Question for Section 7: “Has there been any evidence of fraud or other misconduct in awarding the contract?”</p> <p>Answer: Yes—the SHACKELFORD letter. Jones has forwarded it to the IG.</p> <p>h. Ask the recorder to write the answer on page CM 7-4 of his/her book.</p>	

RECAP OF LESSON 7

a. Show VG 7-9 and leave it in view during the recap.



Solicitation	Evaluation— Sealed Bidding	Evaluation— Negotiation	Award
Terms and Conditions Contract Types Letter Contracts Contract Financing Use of Gov't Property & Supply Sources Bonds (Need for bonds) Solicitation Preparation Soliciting Offers Publicizing Proposed Procurements Prebid/Preproposal Conferences Amending Solicitations Cancelling Solicitations	Bid Evaluation Processing Bids Time Extensions for Bids Late Offers Bid Prices Responsiveness	Proposal Evaluation Processing Proposals Technical Evaluation Price Objectives Cost and Pricing Data Audits Cost Analysis Evaluation Other Terms and Conditions Competitive Range Discussions Factfinding Negotiation Strategy Conducting Negotiations	Selection for Award Mistakes in Offers Responsibility Subcontracting Goals Preparing Awards Executing Awards Award Debriefing Protests Fraud and Exclusion

VG 7-9

b. Ask the Recorder to report the Business Questions that were addressed in Lesson 7. For each Issue, have the Recorder also report the corresponding Answer for the Smoketown Scenario.

See the next page for our recap.

See IG page 7-95 for the Transition to Lesson 8.



LESSON 7 BASIC BUSINESS QUESTIONS **(CM 7-3 and 7-4)**

7.1.1 Terms and Conditions—What terms and conditions should be incorporated in the solicitation?

Jones has decided to:

1. Solicit Firm-Fixed-Price offers, with indefinite delivery terms for acquiring chemicals to refill the Chemical Tank.
2. Make Government financing available.
3. Furnish Government property—namely, the existing filter.
4. Not require bonds [or require them, if the class so decided].

Using the FAR Provision and Clause Matrix, Jones selected terms and conditions for the RFP that result from these decisions.

7.1.2 Soliciting Offers—How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?

Jones:

1. Synopsized the requirement in the CBD and mailed the RFP to potential offerors listed in the Market Report. [Add any other methods of publicity suggested by the class].
2. Answered questions from an offeror.
3. Held a preproposal conference at the Smoketown Plant.
4. Did not amend the RFP. However, Jones cancelled and resolicited to obtain competition and better pricing.

7.2.1 Bid Evaluation—Which, if any, of the submitted bids should be considered for award?

Consider a bid for award which:

- Has not expired,
- Was submitted on time,
- Represents the lowest “evaluated” price,
- Represents a “fair and reasonable” price, and
- Is responsive to the terms and conditions of the IFB.

7.3.1 Proposal Evaluation—Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?

Four offerors were considered for award, being in the competitive range.
Potential issues for discussions with those offerors:

Issue 1. Any technical deficiencies and concerns, in terms of meeting the EPA standards .

Issue 2. Any variance from business terms and conditions (e.g., the proposed delivery schedule) between the RFP and the proposals.

Issue 3. The potential impact on proposed prices of changes in the work design and business terms and conditions.

Issue 4. The overall reasonableness of proposed prices, in view of the Market Report and Government estimate that supports prices in the range of \$3,000,000 per smokestack.

7.3.2 Discussions—What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?

Jones prepared a prenegotiation plan which recommended a strategy and tactics. Based on that plan, Jones conducted discussions with offerors and then requested BAFOs. Based on the BAFOs, SHACKELFORD was in line for award.

7.4.1 Selection for Award—Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?

1. SHACKELFORD and SNUFF-IT are nonresponsible.
2. CLEANCO is responsible.
3. CLEANCO did not allege any postaward mistake in its BAFO.
4. Jones confirmed that all required reviews and approvals have been secured and that the award process has been properly conducted.
5. Jones prepared an award document comprised of the original RFP, all amendments thereto, and CLEANCO's BAFO.
6. Before making award, Jones obtained another fund cite for \$300,000 from Mark Smith.

7.4.2 Executing Awards—How should the contract be executed and announced?

Jones signed an SF26 to execute award to CLEANCO. Jones published a Notice of the award in the CBD and distributed it as required. SCRUBBCO requested a debriefing and has been debriefed.

7.4.3 Protests—How can any protests of the award be resolved?

No protests were filed with the agency or GAO.

7.4.4 Fraud—Has there been any evidence of fraud or other misconduct in awarding the contract?

Yes—the SHACKELFORD letter. Jones forwarded it to the IG.

TRANSITION TO LESSON 8

Inform the class that the Solicitation and Award Phase has been completed. Inform the class that, as part of Lesson 8, Strong Jones will administer the contract with CLEANCO.

BREAK FOR LUNCH.

OVERVIEW OF LESSON 8

<u>TOPIC</u>		<u>Starting Time</u>	<u>Minutes</u>	<u>Page</u>
THURSDAY				
INTRODUCTION TO LESSON 8		12:30	10	8-1
8.1.1	PLANNING	12:40	5	8-2
8.1.1.1	CONTRACT ADMINISTRATION PLANNING	12:45	40	8-4
8.1.1.2	POST-AWARD ORIENTATIONS	1:25	10	8-8
8.1.2	ORDERS AGAINST CONTRACTS/ AGREEMENTS	1:35	10	8-10
8.1.3	CONSENT TO SUBCONTRACTS	1:45	10	8-12
BREAK		1:55	20	
8.2.1	MONITORING AND PROBLEM SOLVING	2:15	60	8-16
8.2.2	PROPERTY	3:15	10	8-28
8.2.3	REPORTING PERFORMANCE PROBLEMS	3:25	5	8-31
FRIDAY				
8.3.1	PAYMENT	8:00	5	8-33
8.3.1.1	LIMITATION OF COSTS	8:05	10	8-35
8.3.1.2	INVOICES	8:15	5	8-38
8.3.1.3	UNALLOWABLE COSTS	8:20	15	8-40
8.3.1.4	ASSIGNMENT OF CLAIMS	8:35	10	8-44
8.3.1.5	COLLECTING CONTRACTOR DEBTS	8:45	10	8-46
8.3.1.6	PROGRESS PAYMENTS	8:55	10	8-48
8.3.1.7	PRICE AND FEE ADJUSTMENT	9:05	10	8-51
8.3.2	ACCOUNTING/DEFECTIVE PRICING	9:15	15	8-54
8.4	CLOSEOUT	9:30	15	8-57
BREAK		9:45	20	

Post-Award Administration Phase

LESSON 8

POST-AWARD ADMINISTRATION PHASE

Post-Award Administration Phase

TOPIC: INTRODUCTION TO LESSON 8

Ref: Pages 8-1 to 8-2



Objective: When you finish this introduction, your students must be able to:

- List the principal functions of the Post-Award Administration phase

Time: 12:30 AM — 10 Minutes

Method: Lecture

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
  CM 8-2 to 8-3	<p>a. Show VG 8-1: Post-Award Administration Phase.</p> <p>b. Refer the class to CM pages 8-2 and 8-3. State that, during the course of Lesson 8, “we will address each of these questions in turn”.</p> <p>c. Select a class member to record answers to the questions. (That class member will recap the Q&As at the end of the Lesson.)</p>	

Functions*

Related Business Questions from CM 8-2 and 8-3

Start-Up

8.1.1 What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?

8.1.2 When an indefinite-delivery contract has been established, how are goods and services ordered?

8.1.3 Should you consent to proposed subcontracts?

Quality Assurance

8.2.1 How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?

8.2.2 If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?

8.2.3 Should you report poor performance for potential suspension or debarment?

Payment and Accounting

8.3.1 What is owed to the contractor, and when and how should payment be made?

8.3.2 Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?

Closeout

8.4 How do you closeout the contract?

*(From VG 8-1)

TOPIC: 8.1.1 PLANNING

Ref. Page 8-3


Objective: When you finish Section 8.1.1, the students must be able to:

- Recognize a typical setting for initiating work under a contract.
- State the basic business question.
- List the two principal planning steps.

Time: 12:40 — 5 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-2 : Solicitation.	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
Planning Contract Administration Planning Post-Award Orientations Ordering Ordering Against Contracts/Agreements Subcontracting Consent to Subcontracts			

VG 8-2

TOPIC: 8.1.1 PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
Page 8-3	<p>b. Present the Setting:</p> <p>“The contract has been awarded to CLEANCO”</p> <p>c. Present the Basic Business Question:</p> <p>“What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?”</p>	
	<p>d. List the Steps:</p> <ol style="list-style-type: none"> 1. Draft and implement a contract administration plan. 2. Orient the contractor. 	

TOPIC: 8.1.1.1 CONTRACT ADMINISTRATION PLANNING

Ref. Pages 8-3 to 8-6


Objective: When you finish Section 8.1.1.1, the students must be able to:

- Identify the CO's basic responsibility for contract administration.
- Define ACO and list functions typically delegated to ACO's.
- Identify typical elements of a contract administration plan.
- List some typical milestones for contract administration.
- Describe how authority is delegated to CORs.

Time: 12:45 — 40 Minutes

Method: Lecture/Discussion and Group Exercise.

LESSON PLAN





Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. State the CO's basic responsibility for administering the contract.</p> <p>Ensure that both parties to the contract—the contractor and the Government—comply with all terms and conditions of the contract.</p> <p>b. Explain that planning is necessary to fulfill this responsibility.</p> <p>As a minimum, CO's must track receipt of the deliverable, acceptance, and payment.</p> <p>c. State that one planning issue is whether to delegate authority to an ACO. Define ACO.</p>	
 CM 8-4	<p>d. Show VG 8-3: ACO Functions.</p> <p>Ask the class to identify contract administration functions that are NOT typically delegated to ACOs. Answers are marked with an "*" at the left.</p>	

ACO FUNCTIONS

1. Conduct postaward orientation conferences
2. Reduce the scope of work to fit remaining funds "*"
3. Administer security requirements, if any
4. Perform property administration
5. Perform technical surveillance
6. Exercise an option. "*"
7. Monitor overall performance to help ensure timely deliveries

VG 8-3/CM 8-4



TOPIC: 8.1.1.1 CONTRACT ADMINISTRATION PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Assert that Strong Jones has decided to administer the contract and will not delegate any authority to an ACO.</p>	
	<p>f. Question: “What are the elements of a typical contract administration plan ?” [Record answers from the class on a flipchart before providing your own]</p>	
	<p>Among the potential answers:</p> <ul style="list-style-type: none"> • Title of the contract, related identifiers, and criticality • Identity of the contractor and key contractor personnel • Location of relevant files • Brief description of the work to be performed • Place of performance and/or delivery points • Contract milestones • Tasks to be performed by Government personnel • Identity of the ACO (if any), and the CO's Representatives (CORs and COTRs) • Tasks and authority delegated to the ACO, CORs, and COTRs 	
	<p>g. Break the class into groups. Using the Smoketown scenario, ask each group to:</p> <ul style="list-style-type: none"> • Brainstorm (i.e., list) potential tasks and milestones that Strong Jones might include in the contract administration plan. • Identify the responsible party for each task and milestone—Government (G) responsibility or Contractor (C) responsibility. 	
	<p>h. Rotating from group to group, ask each group to identify a task or milestone and the party responsible for that task. Continue until no further answers are forthcoming from any group.</p>	

TOPIC: 8.1.1.1 CONTRACT ADMINISTRATION PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. Potential tasks and milestones:</p> <ul style="list-style-type: none"> • Prepare shutdown schedule by Government operating plant team (G). • Issue vehicle permits needed by contractor personnel working on Government property (C&G). • Authorize removal of the filter from the first smokestack (G). • Place subcontracts for chemicals and components (C). • Obtain delivery of chemicals and components (C). • Conduct weekly inspections of work on the filter, chemical tank, and pump (C). • Inspect filter, chemical tank, chemical mix, and replacement pump prior to shipment from the factory (G or C, depending on the contract). • Inspect safety precautions taken by the contractor for work at the Smoketown plant (G). • Prepare plans for providing advance notice to users in the event of a service interruption (C &G). • Inspect commercial equipment before any rigging and lifting operations (C). • Inspect installation of extra supports in stack (G). • Inspect equipment installation (G). • Inspect repairs to stacks (G). • Prepare test equipment (G). • Plan for stack restart (for testing) (G). • Correct as necessary (plus reinspections) (C&G). • Restore site and remove equipment (C). • Conduct final contract completion inspection (G). • Identify any special invoicing or payment procedures (C&G). <p>j. Question: “Strong Jones has identified tasks that are the Government's responsibility under the contract. Will Jones perform these tasks?” [Solicit answers from the class before providing your own]</p>	
<div data-bbox="142 1482 224 1560" data-label="Image"></div>	<p>Answer: No. Instead, the CO will probably delegate authority for inspecting the work <u>in writing</u> to a COR or COTR. This delegation of authority will also specify any limits on authority.</p>	

TOPIC: 8.1.1.1 CONTRACT ADMINISTRATION PLANNING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>k. Question: “If Jones doesn't perform the tasks, how will Jones track performance by the contractor and by the CORs? ” [Solicit answers from the class before providing your own]</p> <p>Answer: By obtaining reports and other feedback from the contractor and the CORs at each critical milestone on the contract administration timeline.</p>	
	<p>l. Question: “Jones has decided (1) what needs to be done, (2) when it needs to be done, (3) and by whom. But CLEANCO does not have this information. Should Jones share the plan, in whole or in part, with CLEANCO? ” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes, in part. For that purpose (among others), the FAR provides for post-award orientations.</p>	

TOPIC: 8.1.1.2 POST-AWARD ORIENTATIONS

Ref. Pages 8-6 to 8-7


Objective: When you finish Section 8.1.1.2, the students must be able to identify:

- Reasons for orienting contractors.
- Three types of orientation.

Time: 1:25 — 10 Minutes

Method: Lecture/Discussion.

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Question: “What would be among the reasons for orienting CLEANCO ?” [Solicit answers from the class before providing your own]</p> <p>Potential answers—To:</p> <ul style="list-style-type: none">• Introduce the CORs to the CLEANCO's project manager.• Notify CLEANCO of the limits on the CORs' authority.• Ensure that both parties are aware of their respective tasks, milestones, and responsibilities under the contract—and have the same understanding of all critical dates therein.• Ensure that all parties understand their obligations for keeping Jones informed of progress. <p>b. State that Jones could orient CLEANCO either by:</p> <ul style="list-style-type: none">• Phone,• Letter, or by• Conference. <p>c. Stress that Jones may not use the post-award conference as a forum for modifying the contract.</p>	

TOPIC: 8.1.1.2 POST-AWARD ORIENTATIONS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 323 980 359">d. Recap the Question for Section 8.1.1:</p> <p data-bbox="440 380 1110 548">“What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?”</p> <p data-bbox="440 569 805 596">Answer: Jones has decided:</p> <ul data-bbox="440 606 1094 779" style="list-style-type: none"> <li data-bbox="440 606 805 634">• No delegation to an ACO <li data-bbox="440 644 1094 743">• Who will serve on the CA team, and the tasks to be performed by each Contracting Officer Representative <li data-bbox="440 753 724 779">• Milestones to track <p data-bbox="440 800 1122 968">Having made these decisions, Jones conducted a post-award orientation to share these decisions with the contractor and to establish a working relationship between the Government and contractor's administration teams.</p> <p data-bbox="391 1010 1102 1073">e. Ask the recorder to write the answer on page CM 8-2 of his/her book.</p> <p data-bbox="391 1115 1127 1251">Transition—Now that the CO has a plan for administering the contract and has oriented the contractor, work should be underway. Under some contracts, however, work does not begin until the Government issues an order.</p>	

TOPIC: 8.1.2 ORDERS AGAINST CONTRACTS/AGREEMENTS

Ref. Pages 8-7 to 8-8

Objective: When you finish Section 8.1.2, the students must be able to:

- Recognize a typical setting for ordering.
- State the basic business question.
- Identify typical elements of a delivery order.
- State the basic rules for ordering against an indefinite delivery contract.

Time: 1:35 — 10 Minutes

Method: Lecture

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“Mark Smith has submitted a purchase request for 100 additional drums of chemicals for the chemical tank. The contract with CLEANCO includes indefinite delivery terms for such orders, at a per drum price of \$150. ”</p> <p>b. Present the Basic Business Question:</p> <p>“When an indefinite-delivery contract has been established, how are goods and services ordered?”</p> <p>c. Revisit Exhibit 7-4 on page 7-6. Lead the class through the column on indefinite delivery contracts—focusing on the row entitled Elements. With that exhibit as a backdrop, note that typical elements of an indefinite delivery contract include:</p> <ul style="list-style-type: none">• "Per unit" price.• Performance period.• Ordering activities and delivery points.• Maximum or minimum limit (if any) on each order.• Extent of each party's commitment on quantity.	

TOPIC: 8.1.2 ORDERS AGAINST CONTRACTS/AGREEMENTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
FAR §16.506	<p>d. Identify typical elements of a delivery order to be placed against an indefinite delivery contract.</p> <ul style="list-style-type: none"> • Date of order. • Contract number and order number. • Item number and description, quantity, and unit price. • Delivery or performance date. • Place of delivery or performance. • Packaging, packing, and shipping instructions (if any) • Accounting and appropriation data. <p>e. State the basic rules for ordering.</p> <ol style="list-style-type: none"> 1. The CO or an authorized ordering officer may place a delivery order against the indefinite-delivery contract as the quantities and destinations become known. 2. Individual orders may not exceed limitations stated in the contract, and total quantities may not exceed the maximum (if specified) in the contract. 3. Funds must be available. 4. Competition is not required.* 	See IG 7-11 (separate line item for ordering chemicals on a "requirements" basis).
FAR §6.001	<p>f. Recap of the Question for Section 8.1.2: "When an indefinite-delivery contract has been established, how are goods and services ordered?"</p> <p>Answer: Jones has prepared a delivery order for the 100 drums at the per unit price of \$150, after verifying:</p> <ol style="list-style-type: none"> 1. Mark Smith's fund cite for \$15,000. 2. That the order is within any limitations established in the contract. <p>g. Ask the recorder to write the answer on page CM 8-2 of his/her book.</p>	

* Note that FAR §6.001 only exempts orders under indefinite quantity contracts when (1) the original contract was placed through full and open competition or (2) the J&A for other than full and open competition adequately covers the requirement contained in the order.

TOPIC: 8.1.3 CONSENT TO SUBCONTRACTS

Ref. Pages 8-8 to 8-9

Objective: When you finish Section 8.1.3, the students must be able to:

- Recognize a typical setting for subcontracting.
- State the basic business question.
- Name at least one consent clause (FAR).
- Identify types of contracts which contain the consent clause.
- When that clause applies, describe the conditions under which contractors have to submit notice of planned subcontracts.
- Identify typical criteria for determining whether or not to give consent.
- Identify the separate requirement of FAR §52.209-6 for notifying COs of compelling reasons for subcontracting with an excluded party.

Time: 1:45 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“CLEANCO plans to buy raw chemicals from DISTILLIT INDUSTRIES. Note that CLEANCO blends these chemicals at its own plant using a proprietary mixing machine and secret recipe. There is at least one small problem —DISTILLIT is on the <u>List of Parties Excluded from Government Procurement Programs</u> because of repeated violations of the Clean Water Act.”</p> <p>b. Present the Basic Business Question:</p> <p>“Should you consent to proposed subcontracts?”</p>	

TOPIC: 8.1.3 CONSENT TO SUBCONTRACTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 8-5	<p>c. Lead the class through FAR 52.244-1 Subcontracts (Fixed-Price Contracts), noting that:</p> <ol style="list-style-type: none"> 1. Generally, the COs do not have any right of consent under Firm-Fixed Price or Fixed Price with Economic Price Adjustment types of contracts (see ¶(a) of the clause). 2. These clauses do not require prior consent for <u>all</u> subcontracts that the prime intends to award (see ¶(b) of the clause). <p>d. Other than for ¶(g), note that the clause does speak to factors considered by COs in deciding whether to grant or withhold consent. Among such factors:</p> <ul style="list-style-type: none"> • The propriety of the proposed subcontract (e.g., not being made to a firm on the excluded list) • Reasonableness of prices being paid. • The process for placing subcontracts, in terms of such issues as subcontractor responsibility, small business participation, competition requirements, and other FAR requirements. 	

EXCERPTS FROM FAR 52.244-1 ON SUBCONTRACTING**SUBCONTRACTS (FIXED-PRICE CONTRACTS)**

* * * * *

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) . . . The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract—



- (1) Is proposed to exceed \$100,000; or
- (2) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed \$100,000.

TOPIC: 8.1.3 CONSENT TO SUBCONTRACTS (CON'T)

- (c) The advance notification required by paragraph (b) above shall include—
- (1) A description of the supplies or services to be subcontracted;
 - (2) Identification of the type of subcontract to be used;
 - (3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
 - (4) The proposed subcontract price and the Contractor's cost or price analysis;

* * * * *

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. . . .


* * * * *

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.903(d) of the Federal Acquisition Regulation (FAR).

* * * * *

(End of clause)

	<p>e. Question: "Does CLEANCO need to inform Strong Jones of its plans to subcontract with DISTILLIT?" [Solicit answers from the class before providing your own]</p>	
	<p>Answer: Yes, under FAR 52.209-6.</p>	
<p>CM 8-6</p>	<p>f. Lead the class through FAR 52.209-6 Subcontracts (Fixed-Price Contracts).</p>	

TOPIC: 8.1.3 CONSENT TO SUBCONTRACTS (CON'T)**EXCERPTS FROM FAR PART 52.209-6****PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT**

* * * * *

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.¹

(End of clause)

g. Recap of the Question for Section 8.1.3:
 “Should you consent to proposed subcontracts?”

Answer: “Since the contract is Fixed Price with Economic Price Adjustment, CLEANCO is not required by FAR clause 52.244-1 to obtain consent from Jones to place the subcontract.

However, CLEANCO notified Jones under FAR 52.209-6 of its intent to subcontract with an Excluded Firm. Jones reminded CLEANCO of its obligations under the clause at FAR 52.223-2—“CLEAN AIR AND WATER”. Among other things, this clause prohibits use of subcontractor facilities that were on EPA's ‘list’ of violators of the Clean Air or Water Acts at the time of contract award.”

h. Ask the recorder to write the answer on page CM 8-2 of his/her book.

¹FAC 90-5

TOPIC: 8.2.1 MONITORING AND PROBLEM SOLVING

Ref. Pages 8-10 to 8-15


Objective: When you finish Section 8.2.1, the students must be able to:

- Recognize a typical setting for monitoring work under the contract.
- State the basic business question.
- Describe the CO's responsibilities for inspection and acceptance.
- List steps in solving performance problems.
- Define “excusable” delay.
- Describe the stop work clause.
- List typical contractual remedies.

Time: Break before this lesson. Resume at 2:15 — 60 Minutes

Method: Lecture/Discussion and Group Exercise

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-4: Quality Assurance.	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
	Monitoring and Problem Solving Monitoring, Inspection, and Acceptance Delays Stop Work Remedies Property Property Administration Reporting Performance Problems Fraud and Exclusion		

VG 8-4

TOPIC: 8.2.1 MONITORING AND PROBLEM SOLVING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Present the Setting:</p> <p>“Work is proceeding under the contract with CLEANCO.”</p> <p>c. Present the Basic Business Question:</p> <p>“How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?”</p> <p>? d. Question: “Who inspects and accepts deliverables?” [Solicit answers from the class before providing your own]</p> <p>Answer: Generally, a COR or COTR. For many contracts, inspection and acceptance is performed by the requiring activity. In other cases, the Government employs full-time inspectors.</p>	
CM 8-7	e. Lead the class through excerpts from the Inspection clause for Fixed Price Supplies (FAR 52.246-2) on page CM 8-7.	Note—the class will see more of this clause in the discussion of remedies.

EXCERPTS FROM FAR PART 52.246-2**INSPECTION OF SUPPLIES—FIXED-PRICE**

* * * * *

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract. . . . As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. . . .

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. . . .

(Continued on next page)

TOPIC: 8.2.1 MONITORING AND PROBLEM SOLVING (CON'T)

* * * * *

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

* * * * *

<div style="border: 1px solid black; padding: 5px; text-align: center; width: 40px; height: 40px; line-height: 40px; margin: 0 auto;">?</div>	<p>f. Question: “What is the CO's responsibility for inspecting and accepting the deliverables?” [Solicit answers from the class before providing your own]</p> <p>Answer: The CO has overall responsibility for the goal of obtaining deliverables from contractors that fully comply with the Schedule and all other terms and conditions of the contract. Given this responsibility, CO's must be on the alert for any potential or actual problems which threaten that goal.</p>	
<p>Page 8-12</p>	<p>g. Lead the class through Exhibit 8-8, STEPS IN RESOLVING PERFORMANCE PROBLEMS:</p> <ul style="list-style-type: none"> • Verify evidence and document the problem • Determine the potential impact on cost, delivery, and other requirements • Determine whether the delay (if any) is excusable or whether the Government is otherwise at fault to any extent • Where necessary, stop work in process while the problem is being resolved • Seek an informal resolution of the problem • Where necessary, invoke any applicable contractual remedy (e.g., rejection of work, liquidated damages, invocation of a warranty, or issuance of a cure or show cause notice) • Modify the contract when and as necessary to resolve the problem • As a last resort, terminate the contract • Keep all interested parties informed of the contract status and document the file 	
<p>CM 8-8</p>	<p>h. Define excusable delay and walk the class through excerpts from the FAR clauses related to delay (page CM 8-8).</p>	

TOPIC: 8.2.1 MONITORING AND PROBLEM SOLVING (CON'T)

52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE).

* * * * *

(c) . . . the Contractor shall not be liable . . . if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

TOPIC: 8.2.1 MONITORING AND PROBLEM SOLVING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 8-9	i. Define stop work and walk the class through excerpts from the FAR clauses related to stop work orders (page CM 8-9).	

**EXCERPTS FROM FAR CLAUSE 52.212-13 RELATING TO
STOP WORK ORDERS**

52.212-13 STOP-WORK ORDER.

* * * * *

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause.

* * * * *

Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work.

The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

* * * * *

TOPIC: 8.2.1 MONITORING AND PROBLEM SOLVING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	j. Ask the class to turn to Exhibit 8-10 on page 8-15. Walk the class through excerpts from the FAR clauses related to the remedies in that Exhibit (pages CM 8-10 through CM 8-12).	

LIQUIDATED DAMAGES**52.212-4 LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT.**

* * * * *

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay the sum of [Contracting Officer insert amount].

* * * * *

(c) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

REJECTION OF WORK PRIOR TO ACCEPTANCE**52.246-2 INSPECTION OF SUPPLIES—FIXED-PRICE**

* * * * *

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. . . .

(Continued on next page)

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies . . . , the Government may either

- (1) . . . remove, replace, or correct the supplies and charge the cost to the Contractor or
- (2) terminate the contract for default.

Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

* * * * *

REJECTION OF WORK AFTER ACCEPTANCE

52.246-2 INSPECTION OF SUPPLIES—FIXED-PRICE

* * * * *

(k) Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government . . . shall have the right to require the Contractor

- (1) at no increase in contract price, to correct or replace the defective or non-conforming supplies . . . or
- (2) . . . repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. . . .

If the Contractor fails to perform or act as required in (1) or (2) above . . . , the Government shall have the right . . . to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)

WARRANTY RIGHTS

52.246-17 WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE.

* * * * *

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for [Contracting Officer shall state specific period of time after delivery . . .]—(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract

* * * * *

(Continued on next page)

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within [Contracting Officer shall insert specific period of time; . . .].

(2) Within a reasonable time after the notice, the Contracting Officer may either—

- (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof . . . that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or
- (ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

* * * * *

CURE NOTICE & TERMINATION FOR DEFAULT

52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE).

* * * * *

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—


- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

* * * * *

TOPIC: 8.2.1 MONITORING AND PROBLEM SOLVING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	k. Ask two members of the class to read the parts in Roleplay #1 (Page CM 8-13).	

Roleplay #1

Strong Jones: Tomorrow, CLEANCO is scheduled to begin preparing its first batch of chemicals for the scrubbers. As I understand it, the chemicals will be mixed with water and sprayed into the scrubber chamber. The spray from the pump washes pollutants out of smoke from the plant's furnaces. The waste water, loaded with the pollutants, drains from scrubbing chamber into a pond. The pond drains into Byrd River. Is that a fair summary?

Mark Smith: Yes. I've confirmed that CLEANCO is on schedule, and that tomorrow, at 9:00 A.M., CLEANCO employees will begin mixing and blending the chemicals that are used in its secret recipe for the scrubber.

Strong Jones: So what's the problem?

Mark Smith: Yesterday, a friend of mine at EPA tipped me off that one of the ingredients of CLEANCO's recipe—pickling acid—is highly toxic. If we use CLEANCO's chemical formula in our scrubbers, we may wind up in violation of water pollution standards.

Strong Jones: Have you verified that possibility?

Mark Smith: No. I would need to check with CLEANCO to determine the likely amount of pickling acid in the waste water from the scrubbing chamber. I also would need to research the EPA standards for pickling acid in waste water.

Strong Jones: How long will this research take?

Mark Smith: Five days, max. However, my concern is that, in five days, CLEANCO will have already blended pickling acid into the first batch. We'd have to throw that batch away and ask CLEANCO to mix a new batch. That would be extremely costly.




Strong Jones: Doesn't the contract require, as part of its performance specifications, that waste water from the scrubbing chambers meet current EPA water pollution standards?

Mark Smith: Yes. We have 30 days to test the installed upgrade against EPA air and water pollution standards prior to acceptance.




Strong Jones: OK. I'll call CLEANCO. You call the EPA.

Questions:

1. Should Strong Jones issue a stop work order?
2. Suppose, based on the call from Strong Jones, CLEANCO decides to change its chemical formula—leaving the pickling acid out. If, as a result, CLEANCO is late in delivering the required drums of its chemical formula, is the delay excusable?
3. What, if any, contractual remedies should Jones contemplate?
4. If you were Strong Jones, what would you say to CLEANCO?

Ref.	Steps In Presenting The Topic	Instructor Notes
	l. Break the class into groups. Ask the groups to reach a consensus answer on each question.	
	<p>m. Select a group and ask: “Should Strong Jones issue a stop work order?” [Solicit their answers from the class before providing your own]</p> <p>Answer: No. CLEANCO is responsible under the contract for delivering a chemical formula that will meet the EPA's standards for water pollution.</p>	
	<p>n. Select a group and ask: “If the contract had a design specification that required use of pickling acid, would the answer be any different?” [Solicit their answers from the class before providing your own]</p> <p>Answer: Yes. If the Government had specified the use of pickling acid, the Government would be the party in a pickle. Then, Jones would be well advised to make an emergency call to CLEANCO ordering CLEANCO to stop work pending modification of the contract to eliminate the specification for pickling acid.</p>	

TOPIC: MONITORING AND PROBLEM SOLVING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>o. Select a group and ask: “Suppose, based on the call from Strong Jones, CLEANCO decides to change its chemical formula—leaving the pickling acid out. If, as a result, CLEANCO is late in delivering the required drums of its chemical formula, is the delay excusable? [Solicit their answers from the class before providing your own]</p> <p>Answer: No, the delay would not be excusable.</p> <p>CLEANCO is responsible under the contract for delivering a chemical formula that will meet the EPA's standards for water pollution. If CLEANCO delivers late because its formula won't meet that requirement, that is CLEANCO's responsibility.</p>	
	<p>p. Select a group and ask: “What, if any, contractual remedies should Jones contemplate?” [Solicit their answers from the class before providing your own]</p> <p>Answer: Rejecting the work if the upgrade fails to meet EPA standards.</p> <p>If the work is late and if the contract had a liquidated damages clause, liquidated damages might be another remedy to invoke. Absent a liquidated damages clause, the Government would have the right to claim actual damages.</p>	
	<p>q. Select a group and ask: “Why not send a cure notice?” [Solicit their answers from the class before providing your own]</p> <p>Answer: At this point, we have no reason to believe that CLEANCO is so failing to make progress that we need to threaten termination for default.</p>	

TOPIC: MONITORING AND PROBLEM SOLVING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="284 325 365 409" style="border: 1px solid black; padding: 5px; display: inline-block;">?</div>	<p>r. Select a group and ask: “If you were Strong Jones, what would you say to CLEANCO?” [Solicit answers from the class before providing your own]</p> <p>Answer: I would advise CLEANCO of Mark Smith's concern about the pickling acid. I would remind CLEANCO of its obligation to meet EPA standards not only for air pollution but also for water pollution. I would advise CLEANCO that the Government will not accept the upgrade if the upgrade fails to meet the water pollution standards. Then, I would ask CLEANCO to keep me advised if CLEANCO anticipates any problem in meeting the contract's Schedule. And I would document the file.</p> <p>s. Recap of the Question for Section 8.2.1: “How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?”</p> <p>Answer: Smith alerted Jones to a potential problem with the CLEANCO contract—namely, that its chemical formula for the scrubber might violate EPA water pollution standards. Based on the report from Mark Smith, Jones contacted CLEANCO and advised CLEANCO of the potential problem. Jones reminded CLEANCO of the Government's right to reject work that does not meet the EPA standards for water pollution. Jones documented the file, having resolved the problem informally at this point. Jones also reported the conversation to Mark Smith.</p> <p>t. Ask the recorder to write the answer on page CM 8-2 of his/her book.</p>	

TOPIC: 8.2.2 PROPERTY

Ref. Page 8-16

Objective: When you finish Section 8.2.2, the students must be able to:

- Recognize a typical setting for application of the property clause.
- State the basic business question.
- State the Government's responsibilities for furnishing property.
- Describe the contractor's responsibility for inventorying, protecting, and preserving, and properly using the property.
- Describe the contractor's potential liability for damage to Government property.

Time: 3:15 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 8-14	a. Present the Setting: “CLEANCO is ready to remove the filter from Smokestack #1. CLEANCO plans to put the filter on a flatbed truck and haul the filter back to CLEANCO's plant for the upgrade.”	
	b. Present the Basic Business Question: “If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?”	
	c. Lead the class through the clause at FAR 52.245-2 Government Property (Fixed-Price Contracts)—CM 8-14. In doing so, stress— <ul style="list-style-type: none">• The Government's responsibility for furnishing the property on time and in suitable condition.• The contractor's responsibility for protecting, and preserving, and properly using the property.• The contractor's potential liability for damages.	

52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS).

* * * * *

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

* * * * *

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor’s timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

* * * * *

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

* * * * *

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.



(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

* * * * *

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.



TOPIC: 8.2.2 PROPERTY (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Question: “Who generally monitors the contractor's use of Government-furnished property” [Solicit answers from the class before providing your own]</p> <p>Answer: Generally, a Government property specialist (administrator).</p>	
	<p>e. Question: “Strong Jones has just received a report from the Property Specialists. The report states that there has been an accident. According to the report, CLEANCO put the filter on one of its flatbed trucks. While en route, the truck came to a sudden stop on a steep hill. The filter fell off the back of the truck, rolled down the hill, smashed 17 parked cars, and was badly dented. Who is liable?” [Solicit answers from the class before providing your own]</p> <p>Answer: Cleanco is liable per section (g) of FAR clause 52.245-2 (CM 8-14).</p> <p>f. Recap of the Question for Section 8.2.2: “If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?”</p> <p>Answer: By enforcing the property clause. In this case, having been informed of the traffic accident, Jones has determined that CLEANCO is liable for repairing the damage to the Government's property.</p> <p>g. Ask the recorder to write the answer on page CM 8-3 of his/her book.</p>	

TOPIC: 8.2.3 REPORTING PERFORMANCE PROBLEMS**Ref.** Pages 8-17 to 8-18**Objective:** When you finish Section 8.2.3, the students must be able to:

- Recognize a typical setting for reporting performance problems.
- State the basic business question.
- Describe the types of data to report to debarring officials.
- Describe the debarring official's options.

Time: 3:25 — 5 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“CLEANCO has installed the upgrade for Smokestack #1. However, Smith has advised Jones to reject the upgrade , because it does not meet the EPA water pollution standards. Too much pickling acid.”</p> <p>b. Present the Basic Business Question:</p> <p>“Should you report poor performance for potential suspension or debarment?”</p> <p> c. Question: “What types of performance problems should be reported to debarring officials ?” [Solicit answers from the class before providing your own]</p> <p> Among potential answers.</p> <ul style="list-style-type: none"> • Repeated late deliveries • Repeated rejections of work • Work of marginal quality • Violation of the Drug-Free Workplace Act • Evidence of fraud or misconduct. 	

TOPIC: 8.2.3 REPORTING PERFORMANCE PROBLEMS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Describe the debarring official's options upon receiving such reports on a given firm.</p> <ul style="list-style-type: none">• Suspension, generally for up to twelve months• Debarment, generally for up to three years• Ineligibility, for which reason the firm will continue to be excluded until it corrects the problem. <p>e. Recap of the Question for Section 8.2.3: “Should you report poor performance for potential suspension or debarment?”</p> <p>Answer: Jones will not report the rejection of work at this time. However, if CLEANCO continues to submit work that is not acceptable, Jones may indeed report CLEANCO.</p> <p>f. Ask the recorder to write the answer on page CM 8-3 of his/her book.</p>	


BREAK FOR THE DAY.

ASSIGN CHAPTERS 9 AND 10 IN THE TEXT/REFERENCE AS THE NIGHT'S READING.

TOPIC: 8.3.1 PAYMENT**Ref.** Page 8-19**Objective:** When you finish Section 8.3.1, the students must be able to:

- Recognize a typical setting for monitoring work under the contract.
- State the basic business question.

Time: 8:00 — 5 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-5: Payment and Accounting	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
		Payment Limitation of Costs Invoices Unallowable Costs Assignment of Claims Collecting Contractor Debts Progress Payments Price and Fee Adjustments Accounting Accounting and Cost Estimating Systems Cost Accounting Standards Defective Pricing	

VG 8-5

TOPIC: 8.3.1 PAYMENT (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	b. Ask the class to turn to page CM 8-15 and follow the setting as you read it.	

SETTING FOR TOPIC 8.3.1: PAYMENT

“CLEANCO has submitted a request for progress payments, along with an invoice for costs incurred during the prior month of work under the contract. The total amount of the invoice is \$145,000, an amount equal to 100% of the incurred costs. Among the invoiced items is \$35,000 for a company car—a new Jaguar (\$35,000 being the sticker price).

With its invoice, CLEANCO has included a request that the Government check be paid directly to its bank.

On the same day that CLEANCO's invoice arrived:

1. An IRS auditor notified Strong Jones that CLEANCO owes the Government \$20,000 in back taxes.
2. Jones received a phone call from J.P. Tool and Die, one of CLEANCO's suppliers. The President of J.P. Tool and Die complained that CLEANCO is 3 months delinquent in paying a bill of \$30,000 for parts that are being used in the upgrade.

Jones called CLEANCO about the complaint from J. P. Tool & Die. CLEANCO replied that the complaint is of no concern to Jones, and that CLEANCO will pay J.P. Tool and Die and its other suppliers when it is good and ready.



In the same conversation, CLEANCO complained bitterly that its costs are going to greatly exceed the negotiated fixed price.”

	c. Present the Basic Business Question: “What is owed to the contractor, and when and how should payment be made?”	
--	---	--

TOPIC: 8.3.1.1 LIMITATION OF COSTS**Ref.** Page 8-20**Objective:** When you finish Section 8.3.1.1, the students must be able to:

- Describe the notice requirements of clauses that limit the Government's liability for costs in cost reimbursement, time and materials, and labor hour contracts.
- Describe the CO's options when a cost overrun appears imminent in cost reimbursement, time and materials, and labor hour contracts

Time: 8:05 — 10 Minutes**Method:** Lecture/Discussion

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Tell the class that “we'll begin with CLEANCO's complaint that its costs are likely to greatly exceed the negotiated fixed price.”</p> <p>Question: “Is the potential cost overrun our problem or CLEANCO's problem?” [Solicit answers from the class before providing your own]</p> <p>Answer: CLEANCO's—since Jones used a Fixed Price contract. However, when a contractor experiences a cost overrun on a fixed price contract, be alert for unsatisfactory performance and/or potential default.</p>	
	<p>b. Question: “Had the contract with CLEANCO been cost reimbursement, would the potential cost overrun be of more concern to Jones?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes. For that reason, cost reimbursement contracts contain a clause limiting the Government's liability for cost overruns.</p> <p>c. Walk the class through the FAR clause on limitation of costs (Page CM 8-16).</p>	

52.232-20 LIMITATION OF COST (COST REIMBURSEMENT CONTRACTS).

* * * * *

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than . . . the estimated cost specified in the Schedule . . . The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost. . . .

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

- (1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
- (2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

- (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule . . . and
- (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

* * * * *

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Inform the class that there is parallel language in FAR 52.232-7, <u>Payments under Time-and-Materials and Labor-Hour Contracts</u>. Under that clause:</p> <ul style="list-style-type: none"> • The Government is not obligated to pay more than the ceiling price in the contract • The contractor is not obligated to continue performance if to do so would exceed the ceiling price. • The contractor must notify the CO when it is within 30 days of expending 85% of the ceiling price. <p>e. Question: “If, under a cost reimbursement contract, the contractor can't complete the contract within the estimated cost in the Schedule, what are the CO's options?” [Solicit answers from the class before providing your own]</p> <p>Answer:</p> <ul style="list-style-type: none"> • Reduce the scope of work • Let the contractor proceed under the current SOW and funding until the contract expires, and obtain whatever the contractor has done to that point • Obtain additional funds and modify the contract to increase the Schedule's estimated cost <p>f. Question: “The CLEANCO contract, being fixed price, has no limitation of costs clause. Given that fact, how should Strong Jones answer CLEANCO's complaint that it faces a cost overrun?” [Solicit answers from the class before providing your own]</p> <p>Answer: If CLEANCO's costs are rising because of inflation in labor rates or materials prices, the economic price adjustment terms of the contract may provide some measure of relief.</p> <p>On the other hand, Jones should remind CLEANCO that it has a duty to provide an acceptable deliverable within the fixed price (as adjusted per the EPA and other clauses).</p>	

TOPIC: 8.3.1.2 INVOICES

Ref. Page 8-21

Objective: When you finish Section 8.3.1.2, the students must be able to:

- Describe invoices.
- List typical deductions and withholdings from invoices.





Time: 8:15 — 5 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define invoice.</p> <p>A bill that the contractor sends the Government.</p> <p>b. List elements required by the Prompt Payment Clause (FAR 52.232-25).</p> <ul style="list-style-type: none">• Name and address of the Contractor.• Invoice date.• Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).• Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.• Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms).• Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).• Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.• Any other information or documentation required by other requirements of the contract (such as evidence of shipment). <p>c. Describe the requirement of the Prompt Pay Act—</p> <p>The Government is obliged to pay its bills promptly to avoid paying interest to the contractor.</p>	

TOPIC: 8.3.1.2 INVOICES AND 8.3.1.3 UNALLOWABLE COSTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Inform the class that the Government might not have to pay interest if:</p> <ul style="list-style-type: none"> • The contractor failed to sent the invoice to the designated billing office. • The invoice is defective, lacking one or more of the elements required by FAR 52.232-25 (provided that the CO notifies the contractor of the defect within the time limits in the clause—generally 7 days). • In the case of a final invoice for any balance of funds due the Contractor, the amount is subject to further contract settlement actions between the Government and the Contractor. • There are disagreements over the payment amount or other issues involving contract compliance (e.g., with quality, quantity, or other such requirements). • The CO temporarily withholds or retains part of the invoiced amount in accordance with the terms of the contract. 	
	<p>e. Question: “Why might the CO not pay an invoice in full?” Record answers from the class on a flipchart before providing your own]</p>	
	<p>Potential Answers (among others):</p> <ul style="list-style-type: none"> • To take discounts for early payment • To resolve discrepancies between invoiced prices and the prices established in the contract • To avoid paying for items that the Government has not received or accepted • To reimburse costs at the rate established in the progress payments clause • To avoid paying for unallowable costs 	
	<p>TRANSITION—Tell the class: “What about the \$35,000 for the Jaguar. Is that cost allowable? Before answering that question, let's examine the meaning of allowability.”</p>	

TOPIC: 8.3.1.3 UNALLOWABLE COSTS

Ref. Pages 8-22 to 8-23


Objective: When you finish Section 8.3.1.3, the students must be able to:

- Define allowability.
- List the five factors in determining allowability.
- Recognize circumstances under which the Government may challenge the allowability of invoiced costs.

Time: 8:20 — 15 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define allowable cost.</p> <p>A cost incurred by the contractor that the Government is contractually obligated to reimburse.</p>	
	b. Show VG 8-6 and 8-6a: Factors in Determining Allowability.	

FACTORS IN DETERMINING ALLOWABILITY

Factor	Question	Example
Reasonableness	Is the cost reasonable -- is it what would have been incurred by a prudent person in the conduct of competitive business?	Is the contractor billing the Gov't for rent on unoccupied, unneeded space?
Allocability	Is the Gov't paying its fair share of indirect costs for work under the contract?	Is the Gov't being charged for 100% of the shop foreman's salary, when in fact the shop foreman also supervised work under five other contracts during the billing period?

Accounting Principles	Is the cost properly charged to the Gov't under the Gov't CAS, or generally accepted accounting principles?	Per the "consistency" principle, has the contractor consistently included the costs of tooling in its manufacturing overhead pool from one billing period to the next?
-----------------------	---	--

VG 8-6

FACTORS IN DETERMINING ALLOWABILITY		
Factor	Question	Example
Terms of Contract	May the invoiced cost be paid under the contract's terms and conditions?	The Gov't might not have to reimburse the contractor for costs in excess of the total estimated cost in the schedule for a cost reimbursable contract.
Limitations in FAR Part 31	Is the Gov't prohibited by Part 31 from paying the cost as invoiced?	The Gov't is prohibited by FAR 31.205-41 from paying for the costs of alcoholic beverages.

VG 8-6a



c. **Question:** "When is allowability an issue?"
[Solicit answers from the class before providing your own]

Answer: Whenever the contract provides for payment on the basis of incurred costs. Examples—

1. All cost reimbursement contracts.
2. Fixed Price Incentive and Redeterminable contracts, since the final prices for those contracts are based on incurred costs.
3. Progress payments under firm fixed price contracts and fixed price contracts with economic price adjustments.

CM
8-17

d. Lead the class through language of the Progress Payments clause related to allowability on Page CM 8-17.

EXCERPTS FROM FAR 52.232-7 RELATED TO ALLOWABILITY

52.232-16 PROGRESS PAYMENTS.

* * * * *

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as ... 80 percent* of the Contractor's cumulative total costs under this contract ... less the sum of all previous progress payments made by the Government under this contract....

(2) The following conditions apply. . . :

- (i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.
- (ii) Costs for the following may be included when incurred. . . . :
 - (A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.
 - (B) Direct labor, direct travel, and other direct in-house costs.
 - (C) Properly allocable and allowable indirect costs.

* * * * *

(3) The Contractor shall not include the following in [their invoices for progress payments] . . . Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

* * * * *




(5) The total amount of progress payments shall not exceed 80 percent of the total contract price.*

* * * * *

(End of clause)

*85% percent under Alternate I for small business concerns.

TOPIC: 8.3.1.3 UNALLOWABLE COSTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>e. Question: “Let's revisit the \$35,000 for the Jaguar. Is that cost allowable under the Progress Payments clause?” [Solicit answers from the class before providing your own]</p> <p>Answer: No. It is neither reasonable nor properly allocable in full to this contract.</p>	
	<p>f. Question: “After CLEANCO's upgrade has been installed and accepted, the Government will pay CLEANCO a fixed price of \$9,300,000. Could CLEANCO use that money to pay for a Jaguar?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes, as far as the terms and conditions of the contract are concerned.</p> <p>In Firm Fixed Price or Fixed Price with Economic Price Adjustment contracts, the Government ultimately pays the fixed price without regard to the allowability of individual elements of cost.</p> <p>TRANSITION—Tell the class that “However, we have not yet received or accepted the upgrades. Rather, CLEANCO has requested progress payments for costs incurred during the prior month of work . What is the dollar amount of the progress payment to which CLEANCO is entitled?”</p>	
	<p>Using the flipchart, record the following figures:</p> <p>Invoiced amount: \$145,000</p> <p>Less the cost of the Jaguar (\$35,000) = \$110,000.</p> <p>Less 20% (\$22,000) = \$88,000</p> <p>State that “\$88,000 is what we owe CLEANCO under the Progress Payments clause. However, we are not yet ready to write CLEANCO a check. The first question is to whom the check would be made out—to CLEANCO or to CLEANCO's bank. CLEANCO has requested what is known as an assignment of claims.”</p>	

TOPIC: 8.3.1.4 ASSIGNMENT OF CLAIMS

Ref. Page 8-24


Objective: When you finish Section 8.3.1.4, the students must be able to:

- Define “assignment of claims.”
- Describe the CO's role in making such assignments.

Time: 8:35 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Define “assignment of claims”</p> <p>The Government makes contract payments directly to the financial institution that has loaned money to the contractor.</p>	
	<p>b. Question: “Why would CLEANCO wish to assign payments to a bank? [Solicit answers from the class before providing your own]</p> <p>Answer: To obtain the loan. Under the Assignment of Claims Act of 1940, a contractor is permitted to use its right to be paid by the Government for contract performance as security for a bank loan.</p>	
	<p>c. Identify some of the things that Jones must verify before permitting CLEANCO to assign payments.</p> <p>Among other things, Jones must verify that the:</p> <ul style="list-style-type: none">• Contract has been properly approved and executed• Contract permits assignment of claims• Assignment covers only money due or that will become due under the contract• The assignment is to a bank, trust company, or other financing agency• The assignment has been properly executed	

TOPIC: 8.3.1.4 ASSIGNMENT OF CLAIMS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>TRANSITION—State that, unfortunately for CLEANCO, the CLEANCO contract contains the clause at FAR 52.232-24, Prohibition of Assignment of Claims.</p> <p>“The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract. (End of clause)”</p> <p>State that, consequently, the check for the \$88,000 must be made out to CLEANCO. However, before the financial officer writes the check, Jones must first consider the \$20,000 owed by CLEANCO to the IRS.</p> <p>[Note to instructor—Why might Jones have put the FAR clause 52.232-24 in the contract? One reason could have been a preliminary indication that CLEANCO owes back taxes. Had there been an assignment of claims, Jones would not have been able to “set-off” the taxes against payments under the contract—assignees are protected from such setoffs.]</p>	

TOPIC: 8.3.1.5 COLLECTING CONTRACTOR DEBTS

Ref. Page 8-25

Objective: When you finish Section 8.3.1.5, the students must be able to:

- Recognize circumstances under which a contractor might owe the Government money.
- List 3 methods for collecting debts.



Time: 8:45 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Describe circumstances under which contractors might owe money to the Government.</p> <ul style="list-style-type: none">• Unpaid, back taxes.• Assessment of liquidated damages.• Damages or excess costs related to defaults (e.g., re-procurement costs).• Overpayments, as when a contractor bills for 1,000 units but only shipped 900.• Government expenses for correcting defects in supplies furnished by the contractor. <p>b. Present 3 methods for collecting debts:</p> <ul style="list-style-type: none">• "Set-offs" against the contractor's next invoice(s).• Cash payments from the contractor, either for the full amount or on a deferred payment schedule.• Applying tax credits that are due to the contractor to the debt.	

TOPIC: 8.3.1.5 COLLECTING CONTRACTOR DEBTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>TRANSITION—Inform the class that, per instructions from the IRS, Jones has notified the finance office to set-off the debt of \$20,000.</p>	
	<p>On the flipchart, subtract \$20,000 from the sum of \$88,000 to show a new total of \$68,000.</p>	
	<p>State that, before the Government writes a check for \$68,000, there is the matter of the complaint from J.P. Tool and Die. CLEANCO apparently is 3 months delinquent in paying a bill of \$30,000 for parts that are being used in the upgrade.</p>	
	<p>That might be grounds to suspend progress payments!</p>	

TOPIC: 8.3.1.6 PROGRESS PAYMENTS


Ref. Pages 8-26 to 8-27

Objective: When you finish Section 8.3.1.6, the students must be able to:

- Describe the process of paying and liquidating progress payments.
- State the purpose for monitoring progress payments.
- Identify reasons for suspending or reducing progress payments.

Time: 8:55 — 10 Minutes

Method: Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Describe the process of making and liquidating progress payments.</p> <p>As already indicated, the Progress Payments clause authorizes the CO to reimburse contractors for incurred costs.</p> <p>Upon acceptance of the deliverable, the contractor submits a final invoice for the fixed price in the contract.</p> <p>Before paying the fixed price, the CO subtracts the dollar amount of prior progress payments. This is known as “liquidating” the progress payments.</p>	
	<p>b. Question: “Why should COs monitor the making and liquidation of progress payments?” [Solicit answers from the class before providing your own]</p> <p>Answer: To protect the Government from the risks inherent in providing up-front money to a contractor. For instance, there is always the risk that the contractor will go bankrupt before the Government sees the first deliverable. It may be impossible, in that case, to recover the progress payments—money down the drain.</p> <p>Hence, the Progress Payments clause authorizes the CO to suspend or reduce progress payments.</p>	

TOPIC: 8.3.1.6 PROGRESS PAYMENTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 8-18	c. Walk the class through language in the Progress Payments Clause on reducing or suspending payments (CM 8-18)	

**EXCERPTS FROM FAR 52.232-16 RELATED TO REDUCING OR
SUSPENDING PROGRESS PAYMENTS**

52.232-16 PROGRESS PAYMENTS.




* * * * *

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract
- (2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
- (3) Inventory allocated to this contract substantially exceeds reasonable requirements.
- (4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.
- (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

* * * * *

TOPIC: 8.3.1.6 PROGRESS PAYMENTS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Question: “Would CLEANCO's failure to pay its suppliers represent a potential grounds for reducing or suspending progress payments?” [Solicit answers from the class before providing your own]</p> <p>Answer: Yes.</p> <p>TRANSITION—Inform the class that Jones has advised CLEANCO to pay its bills or face suspension of progress payments under FAR 52.232-16(c)(4).</p> <p> Return to the flipchart and state that, finally, Jones has authorized the finance office to cut a check for \$68,000 to CLEANCO.</p> <p> As the contract winds down, there is yet one last payment issue to consider—what is the final price that the Government will owe CLEANCO?</p>	

TOPIC: 8.3.1.7 PRICE AND FEE ADJUSTMENT**Ref.** Page 8-27**Objective:** When you finish Section 8.3.1.7, the students must be able to:

- List different types of fee and price adjustments.

Time: 9:05 — 10 Minutes**Method:** Lecture/Discussion

LESSON PLAN		
Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Describe the impact of an Economic Price Adjustment clause on the final price of the CLEANCO contract.</p> <p style="padding-left: 40px;">The price may be adjusted upwards or downwards based on changes in the prices of labor and materials required for performance of the contract.</p> <p>b. Present other types of adjustments that might be made to the fee or price of a contract.</p> <ul style="list-style-type: none"> • Addition of an "award fee" to the base fee of a cost plus award fee contract • Establishment of the final price of a fixed-price incentive contract • Establishment of the final fee of a cost plus incentive fee contract • Prospective or retroactive redetermination of the negotiated price under a price redetermination contract <p>c. State that the contractor generally has the burden of proposing and justifying the amount that the fee or price should be adjusted.</p>	
CM 8-19	d. Walk the class through excerpts from FAR 52.216-4 from page CM 8-19.	

**EXCERPTS FROM FAR 52.216-4
RELATED TO ECONOMIC PRICE ADJUSTMENTS**

52.216-4 ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL.

* * * * *

(a) The Contractor shall notify the Contracting Officer if . . . the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract.

The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) below, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) above, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. . . .

(c) Any price adjustment under this clause is subject to the following limitations:

- (1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases

* * * * *

- (4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

* * * * *

(e) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

TOPIC: 8.3.1.7 PRICE AND FEE ADJUSTMENT (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>d. Recap of the Question for Section 8.3.1: “What is owed to the contractor, and when and how should payment be made?”</p> <p>Answer: CLEANCO requested a payment under the Progress Payments clause in the amount of \$145,000. Strong Jones:</p> <ol style="list-style-type: none"> 1. Advised CLEANCO that any cost overrun is CLEANCO's responsibility—that CLEANCO must deliver an acceptable product within the fixed price of the contract. 2. Deducted \$35,000 for the cost of the Jaguar. 3. Deducted \$22,000 because of the cap of 80% on the reimbursement of incurred costs. 4. Deducted another \$20,000 from the invoice to collect the amount owed by CLEANCO to the Government for back taxes. 5. Instructed the finance office to cut a check for \$68,000 payable to CLEANCO. 6. Refused the request to assign claims to CLEANCO's bank. 7. Advised CLEANCO to pay its bills or face suspension of progress payments. 8. Is waiting for notice from CLEANCO before making any adjustments in the price of the contract based on the contract's economic price adjustment terms and conditions. <p>e. Ask the recorder to write the answer on page CM 8-3 of his/her book.</p>	

TOPIC: 8.3.2 ACCOUNTING/DEFECTIVE PRICING

Ref. Pages 8-28 to 8-31


Objective: When you finish Section 8.3.2, the students must be able to:

- Recognize a typical setting for accounting issues.
- State the basic business question.
- Describe the contractor's responsibility for establishing acceptable accounting systems.
- Identify basic requirements for application of Cost Accounting Standards.
- Describe defective pricing.

Time: 9:15 — 15 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Present the Setting:</p> <p>“The Government is now paying progress payments to CLEANCO based on incurred costs and will ultimately pay the fixed price.”</p> <p>b. Present the Basic Business Question:</p> <p>“Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?”</p> <p>c. Describe the contractor's obligation to maintain an adequate accounting system.</p> <p>Whenever a contract requires the contractor to furnish data on incurred costs, the contract also requires the contractor to maintain an adequate accounting system and open its books to the Government.</p>	

TOPIC: 8.3.2 ACCOUNTING/DEFECTIVE PRICING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 8-20	d. Walk the class through language from the Progress Payments clause related to accounting (CM 8-20).	

EXCERPTS FROM FAR 52.232-16 RELATED TO ACCOUNTING**52.232-16 PROGRESS PAYMENTS.**

* * * * *

☞ (c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

* * * * *




(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and access to records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

* * * * *

	<p>e. State that, in some cases, contractors must abide by Cost Accounting Standards.</p> <p>In such cases, the contractors are required to disclose their accounting practices . If the Government finds that those practices do not conform to the Standards, the contractor must:</p> <ol style="list-style-type: none"> 1. Change its accounting system. 2. Renegotiate the prices of contracts affected by the changes in the firm's accounting practices. <p>f. Stress that relatively few contracts in nondefense agencies are subject to CAS.</p>	
--	---	--


TOPIC: ACCOUNTING/DEFECTIVE PRICING (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. State that the Truth in Negotiations Act provides another basis for revisiting prices.</p> <p>Here, the issue is whether the CO, when negotiating the original price of the contract, had relied on certified cost and pricing data that in fact were not accurate, not complete, or not current.</p> <p>If the CO had, as a result, agreed to a higher price than warranted, the Government is entitled to a commensurate reduction in the contract price and interest on the amount of any overpayment.</p>	
	<p>h. Point out that consumers have similar rights.</p> <p>Suppose you purchase an automobile from SHADY PINES USED CARS for \$25,000, based in part on an newspaper ad representing \$26,999 as the lowest price that SHADY PINES USED CARS has ever publicly offered for that make and model.</p> <p>The next day, while at the public library, you notice that, one month earlier, SHADY PINES USED CARS had published an ad for the exact same make and model of car at an asking price of \$23,999.</p> <p>Would you revisit the price with SHADY PINES USED CARS?</p>	
	<p>i. Recap of the Question for Section 8.3.2: “Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?”</p> <p>Answer:</p> <p>CLEANCO's books, records and accounts were audited. The audit concluded that CLEANCO'S accounting system and controls are adequate for the proper administration of the Progress Payments clause.</p> <p>j. Ask the recorder to write the answer on page CM 8-3 of his/her book.</p>	

TOPIC: 8.4 CLOSEOUT**Ref.** Pages 8-31 to 8-32**Objective:** When you finish Section 8.4, the students must be able to:


- Recognize a typical setting for closeout.
- State the basic business question.
- List 8 steps in closing out a contract.

Time: 9:30 — 15 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 8-7 : Closeout	

Start-Up	Quality Assurance	Payment and Accounting	Closeout
			Closeout Closeout

VG 8-7

	<p>b. Present the Setting: “CLEANCO has completed the work. The upgrade has been inspected and accepted.”</p> <p>c. Present the Basic Business Question: “How do you closeout the contract?”</p> <p>d. Show VG 8-8 and 8-8a: Eight Steps to Contract Closeout. Explain that a comprehensive listing of closeout requirements, as well as time standards for completing closeout, appears in FAR Subpart 4.8. Have the students follow along by looking at Exhibit 8-15 on page 8-32 of the text reference.</p>	
---	--	--

TOPIC: 8.4 CLOSEOUT (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
------	-------------------------------	------------------

EIGHT STEPS TO CONTRACT CLOSEOUT

1. Verify that the contract is physically complete
2. Obtain forms, reports, and clearances
3. Verify that the Government and the contractor have satisfied other terms and conditions for closeout
4. Settle any outstanding issues
5. Verify that there are no outstanding claims or disputes
6. Make final payment and de-obligate any remaining funds
7. Prepare a contract completion statement and, based on the retention schedule in FAR 4.805, provide for the disposal of files
8. Determine whether to invoke phase-in/phase-out rights when "Continuity of Services" are required

VG 8-8 & 8-8a

e. **Recap of the Question for Section 8.4:** "How do you closeout the contract?"

Answer: By complying with the requirements of FAR 4.8, as illustrated in Exhibit 8-15.

f. Ask the recorder to write the answer on page CM 8-3 of his/her book.

RECAP OF LESSON 8



a. Show VG 8-9 and leave it in view during the recap.

Start-Up	Quality Assurance	Payment and Accounting	Closeout
Planning Contract Administration Planning Post-Award Orientations Ordering Ordering Against Contracts/Agreements Subcontracting Consent to Subcontracts	Monitoring and Problem Solving Monitoring, Inspection, and Acceptance Delays Stop Work Remedies Property Property Administration Reporting Performance Problems Fraud and Exclusion	Payment Limitation of Costs Invoices Unallowable Costs Assignment of Claims Collecting Contractor Debts Progress Payments Price and Fee Adjustments Accounting Accounting and Cost Estimating Systems Cost Accounting Standards Defective Pricing	Closeout Closeout

VG 8-9



b. Ask the Recorder to report the Business Questions that were addressed in Lesson 8. For each Issue, have the Recorder also report the corresponding Answer for the Smoketown Scenario.

See the next pages for our recap.

See IG page 62 for the Transition to Lesson 9.

LESSON 8 BASIC BUSINESS QUESTIONS **(CM 8-2 and 8-3)**

8.1.1 Planning—What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?

Jones decided:

- No delegation to an ACO.
- Who will serve on the CA team, and the tasks to be performed by each Contracting Officer Representative.
- Milestones to track.

Having made these decisions, Jones conducted a post-award orientation.

8.1.2 Ordering—When an indefinite-delivery contract has been established, how are goods and services ordered?

Jones prepared a delivery order for the 100 drums at the per unit price of \$150, after verifying:

1. Mark Smith's fund cite for \$15,000.
2. That the order is within any limitations established in the contract.

8.1.3 Subcontracting—Should you consent to proposed subcontracts?

Since the contract is Fixed Price with Economic Price Adjustment, CLEANCO is not required to obtain consent from Jones to place the subcontract under FAR clause 52.244-1.

However, CLEANCO notified Jones under FAR 52.209-6 of its intent to subcontract with an Excluded Firm. Jones reminded CLEANCO of its obligations under the clause at FAR 52.223-2—“CLEAN AIR AND WATER”. Among other things, this clause prohibits use of subcontractor facilities that were on EPA's ‘list’ of violators of the Clean Air or Water Acts at the time of contract award.

8.2.1 Monitoring, Inspection, and Acceptance—How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?

Smith alerted Jones to a potential problem with the CLEANCO contract—namely, that its chemical formula for the scrubber might violate EPA water pollution standards. Based on the report from Mark Smith, Jones contacted CLEANCO and advised CLEANCO of the potential problem. Jones reminded CLEANCO of the Government's right to reject work that does not meet the EPA standards for water pollution. Jones documented the file, having resolved the problem informally at this point. Jones also reported the conversation to Mark Smith.

8.2.2 Property—If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?

By enforcing the property clause. In this case, having been informed of the traffic accident, Jones has determined that CLEANCO is liable for repairing the damage to the Government's property.

8.2.3 Reporting Performance Problems—Should you report poor performance for potential suspension or debarment?

Jones will not report the rejection of work at this time. However, if CLEANCO continues to submit work that is not acceptable, Jones may indeed report CLEANCO.

8.3.1 Payment—What is owed to the contractor, and when and how should payment be made?

CLEANCO requested a payment under the Progress Payments clause in the amount of \$145,000. Strong Jones:

1. Advised CLEANCO that any cost overrun is CLEANCO's responsibility—that CLEANCO must deliver an acceptable product within the fixed price of the contract.
2. Deducted \$35,000 for the cost of the Jaguar.
3. Deducted \$22,000 because of the cap of 80% on the reimbursement of incurred costs.
4. Deducted another \$20,000 from the invoice to collect the amount owed by CLEANCO to the Government for back taxes.
5. Instructed the finance office to cut a check for \$68,000 payable to CLEANCO.
6. Refused the request to assign claims to CLEANCO's bank.

Post-Award Administration Phase

- 7. Advised CLEANCO to pay its bills or face suspension of progress payments.
- 8. Is waiting for notice from CLEANCO before making any adjustments in the price of the contract based on the contract's economic price adjustment terms and conditions.

8.3.2 Accounting and Defective Pricing—Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?

CLEANCO's books, records and accounts were audited. The audit concluded that CLEANCO'S accounting system and controls are adequate for the proper administration of the Progress Payments clause.

8.4.1 Closeout—How do you closeout the contract?

By complying with the requirements of FAR 4.8, as illustrated in Exhibit 8-15.

TRANSITION TO LESSON 9

Inform the class that the Post-Award Administration Phase is not quite complete. Inform the class that , as part of Lesson 9, we will look at several alternate endings to the Smoketown Scenario—involving modifications, terminations, and claims.

OVERVIEW OF LESSON 9

<u>TOPIC</u>		<u>Starting Time</u>	<u>Minutes</u>	<u>Page</u>
FRIDAY				
INTRODUCTION TO LESSON 9		10:05	15	9-1
9.1	CONTRACT MODIFICATION	10:20	20	9-2
9.2	TERMINATION	10:40	30	9-7
9.3	CLAIMS	11:10	15	9-14
9.4	SPECIALIZED AREAS	11:25	5	9-18

LESSON 9



MODIFICATIONS, TERMINATIONS, AND CLAIMS

Modifications, Terminations, and Claims

TOPIC: INTRODUCTION TO LESSON 9**Ref:** Pages 9-1 to 9-2**Objective:** When you finish this introduction, your students must be able to:

- List the principal functions related to modifications, terminations, and claims.

Time: Break prior to this lesson. Resume at 10:05 AM — 15 Minutes**Method:** Lecture**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
  CM 9-2	<p>a. Show VG 9-1: Modifications, Terminations, and Claims.</p> <p>b. Refer the class to CM page 9-2. State that, during the course of Lesson 9, “we will address each of these questions in turn.”</p> <p>c. Select a class member to record answers to the questions. (That class member will recap the Q&As at the end of the Lesson.)</p>	

Functions***Related Business Questions From CM Page 9-2****Contract Modification**

9.1 Should you modify the contract, and, if so, how?

Termination

9.2 Should you terminate the contract, and, if so, how?

Claims

9.3 How should you respond to the contractor's claim?

Specialized Areas

9.4 What are the specialized areas of acquisition?

*(From VG 9-1)

TOPIC: 9.1 CONTRACT MODIFICATION

Ref. Pages 9-3 to 9-5


Objective: When you finish Section 9.1, the students must be able to:

- Recognize typical settings for modifying contracts.
- State the basic business question.
- Define “contract modification”.
- Distinguish unilateral from bilateral modifications.
- Explain “scope of work” as a constraint on contract modification.

Time: 10:20 — 20 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 9-2 : Contract Modification.	

Contract Modification	Termination	Claims	Specialized Areas
Modifications/ Options Contract Modifications Exercising Options			

VG 9-2

TOPIC: 9.1 CONTRACT MODIFICATION (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Present the Setting:</p> <p>“Mark Smith has two problems.</p> <ol style="list-style-type: none"> 1. A small, nearby airport is going to start night operations for private aircraft. For safety reasons, Smith has been advised to install red warning lights on the smokestacks. 2. While removing the filters, CLEANCO's engineers discovered that the smokestacks are more decrepit than originally thought. They reported their findings to Smith. Smith sent his own engineers into the smokestacks. They subsequently recommended that five support brackets be installed for each filter. However, CLEANCO is only obliged to provide three support brackets per filter under the current terms of the contract.” <p>c. Present the Basic Business Question:</p> <p>“Should you modify the contract, and, if so, how?”</p> <p>d. Define “contract modification.”</p> <p>Any written change in the terms of a contract. Modifications can be either unilateral or bilateral.</p> <p>e. Distinguish unilateral from bilateral modifications.</p> <ul style="list-style-type: none"> • Unilateral modifications are issued by the CO and signed only by the CO • Bilateral modifications are negotiated and signed by both the CO and the contractor 	

f. Identify clauses that provide for unilateral modifications.

Among others:

- Government Property Clause
- Option for Increased Quantity Clause
- Changes Clause

g. Walk the class through the changes clause.

EXCERPTS FROM FAR 52.243-1 ON CHANGES (CM 9-3)

52.243-1 CHANGES—FIXED-PRICE

* * * * *

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

* * * * *


(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

TOPIC: 9.1 CONTRACT MODIFICATION (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
<div data-bbox="284 325 365 409" style="border: 1px solid black; padding: 5px; display: inline-block;">?</div>	<p data-bbox="389 325 1128 472">h. Question: “Why take the trouble of modifying the contract bilaterally when the changes clause permits you to proceed unilaterally?” [Solicit answers from the class before providing your own]</p> <p data-bbox="438 493 1031 556">Answers: Bilateral modifications are useful when—</p> <ul data-bbox="446 567 1120 850" style="list-style-type: none"> • Modifying terms of a contract that may not be unilaterally changed under the changes or other clauses • It is possible to negotiate and reach agreement on the equitable adjustment prior to making the change • Incorporating the equitable adjustment into the contract following the issuance of a change order <p data-bbox="389 892 1063 997">i. Stress that neither bilateral nor unilateral modifications may ordinarily change the scope of a contract.</p>	
<div data-bbox="284 1039 365 1123" style="border: 1px solid black; padding: 5px; display: inline-block;">?</div>	<p data-bbox="389 1039 1120 1228">j. Question: “Jones has approached CLEANCO about installing two additional brackets for each filter. Would that be within the scope of the contract?” [Solicit answers from the class before providing your own]</p> <p data-bbox="438 1249 1120 1312">Answer: Yes. The general scope of the contract is to upgrade and install the filters.</p> <p data-bbox="438 1333 1128 1585">If time permits, the modification should be bilateral. In that case, both the price of the modification and any related change in the delivery schedule would be negotiated prior to commencement of work under the modification, and the contract modification would be signed by both parties.</p>	


TOPIC: 9.1 CONTRACT MODIFICATION (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>k. Question: “Smith wants warning lights installed on the smokestacks. Would that be within the general scope of work?” [Solicit answers from the class before providing your own]</p> <p>Answer: Probably not. Adding safety warning lights to a contract for upgrading air quality equipment would probably be viewed as outside the scope of the contract--it constitutes a new acquisition subject to FAR policies on competition.</p> <p>l. Recap of the Question for Section 9.1: “Should you modify the contract, and, if so, how?”</p> <p>Answer: Jones has decided to:</p> <ol style="list-style-type: none">1. Negotiate a bilateral modification of the contract with CLEANCO to install five support brackets for each filter.2. Acquire safety lights for the smokestacks through a separate acquisition. <p>m. Ask the recorder to write the answer on page CM 9-2 of his/her book.</p>	

TOPIC: 9.2 TERMINATION**Ref.** Pages 9-5 to 9-8**Objective:** When you finish Section 9.2, the students must be able to:

- Recognize typical settings for terminating contracts.
- State the basic business question.
- Distinguish terminations for convenience from terminations for default.
- Explain the role of sureties in terminations for default.

Time: 10:40 — 30 Minutes**Method:** Lecture/Discussion**LESSON PLAN**

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 9-3 : Termination.	

Contract Modification	Termination	Claims	Specialized Areas
	Termination Termination A. Determine whether to terminate for convenience or default. B. Terminating for convenience. C. Terminating for default. Bonds		

VG 9-3

TOPIC: 9.2 TERMINATION (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>b. Present the Setting:</p> <p>“Halfway through installation of the equipment, the first smoke stack collapsed. Smith blames the collapse on shoddy workmanship by CLEANCO. Moreover, Smith reports that he no longer needs the upgrades—EPA has rescinded the new air pollution standards. Smith wants his money back, and he wants CLEANCO off the site for good.”</p> <p>c. Present the Basic Business Question:</p> <p>“Should you terminate the contract, and, if so, how?”</p> <p>d. State the two basic reasons for terminating a contract:</p> <ol style="list-style-type: none">1. The needs of the Government have substantially changed.2. The contractor has failed, or is failing, to perform as required by the contract. <p>e. State that, when the needs of the Government have changed, the CO may choose to terminate the contract for convenience.</p>	
CM 9-4	<p>f. Walk the class through FAR 249-2, Termination for Convenience of the Gov't (Fixed Price) on page CM 9-4.</p>	

EXCERPTS FROM FAR 52.249-2: TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE)

(a) The Government may terminate performance of work under this contract . . . if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders
- (3) Terminate all subcontracts

* * * * *

- (6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

* * * * *

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer. . . .

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. . . . The contract shall be amended, and the Contractor paid the agreed amount. . . .

(f) If the Contractor and the Contracting Officer fail to agree . . . , the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows:

- (1) The contract price for completed supplies or services accepted by the Government . . . [but] not previously paid for, adjusted for any saving of freight and other charges.
- (2) The total of—
 - (i) The costs incurred in the performance of the work terminated . . . ;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts . . . ; and
 - (iii) A [reasonable] . . . profit on subdivision (i) above . . . ; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit . . . and shall reduce the settlement to reflect the indicated rate of loss.

* * * * *

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under [¶f, among others] . . .

TOPIC: 9.2 TERMINATIONS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	g. State that, if the contractor is failing to perform, then the CO may exercise the Government's right to terminate the work, per the "Termination for Default" clause.	
	h. Walk the class through FAR 249-8, Default (Fixed-Price Supply and Service) on page CM 9-5.	

**EXCERPTS FROM FAR 52.249-8 DEFAULT
(FIXED-PRICE SUPPLY AND SERVICE)**

(a)(1) The Government may, . . . by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire . . . supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) . . . the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. . . .

* * * * *


(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon

direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. . . .

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.
(End of clause)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>i. Question: “Should the CLEANCO contract be terminated for convenience or for default?” [Solicit answers from the class before providing your own]</p> <p>Case for Convenience (see the next page for the case for default)</p> <ol style="list-style-type: none"> 1. The real reason for terminating the contract is that EPA has rescinded the standards, not because of any failing on the part of CLEANCO. Smith simply does not need the upgrade anymore. 2. Smith blames the smokestack's collapse on CLEANCO. However, one of the issues is whether the Government is culpable in part for the collapse—e.g., if the condition of the stacks was not as represented by the Government. 3. Even if Jones terminates for convenience, Strong Jones would still be able to recover the cost of repairing the smokestack—to the extent that CLEANCO is in fact responsible for the damage. 	

TOPIC: 9.2 TERMINATIONS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>Case for Default.</p> <ol style="list-style-type: none"> 1. So what if Smith no longer needs the up-grade. “The fact that the Government no longer needs an item has been frequently rejected as a basis for overturning an otherwise proper default termination.”¹ 2. Absent a smokestack, CLEANCO cannot possibly meet its obligation to install an acceptable upgrade by the date promised in the contract. 3. The only real issue is whether the failure to perform arises from causes beyond the control and without the fault or negligence of CLEANCO. If CLEANCO can make a case that the default was excusable, then the termination would be converted to convenience. 4. The first step in terminating for default would be a cure notice. The cure notice would afford CLEANCO an opportunity to present its side of the story prior to default. <p>j. Remind the class that Strong Jones did not required a bond from CLEANCO.</p> <p>k. Question: “If CLEANCO had been bonded, what would the role of the surety have been in any termination for default ?” [Solicit answers from the class before providing your own]</p> <p>Answer: Jones would have given the surety the choice of (1) arranging for performance or (2) allowing the Government to re-procure at the surety's expense, to the extent the surety is liable for re-procurement costs.</p>	



¹Cibinic and Nash, “Administration of Government Contracts,” (2nd edition, 1985), page 745.

TOPIC: 9.2 TERMINATIONS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p data-bbox="391 323 1114 401">l. Recap of the Question for Section 9.2: “Should you terminate the contract, and, if so, how?”</p> <p data-bbox="440 415 1122 562">Answer: Jones has decided to terminate the contract for convenience, but to obtain damages from CLEANCO to the extent that CLEANCO is in fact liable for the damage to the smokestacks.</p> <p data-bbox="440 577 1114 724">Subsequently Jones issued a termination notice to CLEANCO, obtained a settlement proposal from CLEANCO, and has opened negotiations of the proposal.</p> <p data-bbox="391 814 1122 886">m. Ask the recorder to write the answer on page CM 9-2 of his/her book.</p>	

TOPIC: 9.3 CLAIMS

Ref. Pages 9-9 to 9-10

Objective: When you finish Section 9.3, the students must be able to:

- Recognize a typical setting for a claim.
- State the basic business question.
- Define “claim”.
- State the CO's role in responding to claims.

Time: 11:10 — 15 Minutes

Method: Lecture/Discussion

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	a. Show VG 9-4 : Claims.	

Contract Modification	Termination	Claims	Specialized Areas
		Claims Claims	

VG 9-4

TOPIC: 9.3 CLAIMS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
CM 9-6	<p>b. Present the Setting:</p> <p>“CLEANCO blames the Government for collapse of the smoke stack and has filed a claim for damage to its equipment.”</p> <p>c. Present the Basic Business Question:</p> <p>“How should you respond to the contractor's claim?”</p> <p>d. Define “claim.”</p> <p>A written demand or written assertion by a party to the contract that it is entitled to:</p> <ul style="list-style-type: none"> • Additional money “in a sum certain” • Adjustment or interpretation of contract terms • Other relief arising under or related to the contract 	
	<p>e. Walk the class through excerpts from FAR 52.233-1—the disputes clause—on page CM 9-6.</p>	

EXCERPTS FROM FAR 52.233-1 DISPUTES

* * * * *

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

* * * * *

However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. . . .

* * * * *

Modifications, Terminations, and Claims

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that—

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

* * * * *

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. . . . ²

* * * * *

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)


f. Describe the CO's role in responding to a claim.	
---	--

CO's typically:

- Research the claim and prepare a finding of facts.
- Prepare an initial position on the claim and on the amount of any equitable adjustment in price or other terms.
- Discuss the claim with the contractor and try to reach a mutual agreement on its resolution.
- Issue the CO's decision.

²FAC 90-10

TOPIC: 9.3 CLAIMS (CON'T)

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>g. Question: “If the contractor disagrees with the CO, where does the contractor take its appeal?” [Solicit answers from the class before providing your own]</p> <p>Answer: To the cognizant Board of Contract Appeals or to the United States Claims Court.</p> <p>h. Recap of the Question for Section 9.3: “How should you respond to the contractor's claim?”</p> <p>Answer: To the extent that the Government is at fault, Jones probably will accept the claim and attempt to reach an equitable adjustment with CLEANCO.</p> <p>To the extent that CLEANCO is at fault, Jones may file a counter claim.</p> <p>i. Ask the recorder to write the answer on page CM 9-2 of his/her book.</p>	

TOPIC: 9.4 SPECIALIZED AREAS

Ref. Pages 9-11 to 9-14


Objective: When you finish Section 9.4, the students must be able to:

- List specialized areas of acquisition.

Time: 11:25 — 5 Minutes

Method: Lecture

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>a. Show VG 9-5: Specialized Areas. State that these areas are the subject of unique laws, rules or contract clauses that are beyond the scope of this course.</p> <p>b. Draw attention to Exhibit 9-9 on page 9-12 of the text/reference.</p>	

Contract Modification	Termination	Claims	Specialized Areas
			ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

VG 9-5

RECAP OF LESSON 9

a. Show VG 9-6 and leave it in view during the recap.

Contract Modification	Termination	Claims	Specialized Areas
Modifications/ Options Contract Modifications Exercising Options	Termination Termination A. Determine whether to terminate for convenience or default. B. Terminating for convenience. C. Terminating for default. Bonds	Claims Claims	ADP/Telecommunications Construction A&E Systems Procurement Simplified Purchasing Real Property Leasing

VG 9-6



b. Ask the Recorder to report the Business Questions that were addressed in Lesson 9. For each Issue, have the Recorder also report the corresponding Answer for the Smoketown Scenario.

See the next page for our recap.

See IG page 9-20 for the Transition to Lesson 10.



LESSON 9 BASIC BUSINESS QUESTIONS (CM 9-2)

9.1 Contract Modification—Should you modify the contract, and, if so, how?

Jones:

1. Negotiated a bilateral modification of the contract with CLEANCO to install five support brackets for each filter.
2. Acquired safety lights for the smokestacks through a new acquisition.

9.2 Termination—Should you terminate the contract, and, if so, how?

Jones decided to terminate the contract for convenience.

Subsequently Jones issued a termination notice to CLEANCO, obtained a settlement proposal from CLEANCO, and has opened negotiations of the proposal.

9.3 Claims—How should you respond to the contractor's claim?

To the extent that the Government is at fault for the collapse of the smokestack, Jones probably will accept the claim and attempt to reach an equitable adjustment with CLEANCO.

To the extent that CLEANCO is at fault, Jones may file a counter claim.

9.4 Specialized Areas—What are the specialized areas of acquisition?

ADP/Telecommunications

Construction

A&E

Systems Procurement

Simplified Purchasing

Real Property Leasing

TRANSITION TO LESSON 10

Question: Did all the players in the Smoketown Scenario observe strict standards of conduct at all times in this scenario? To ask this question [which we won't answer in class] requires a knowledge of the standards of conduct.

LESSON 10

STANDARDS OF CONDUCT

Standards of Conduct

TOPIC: INTRODUCTION TO LESSON 10

Ref: Chapter 10

Objective: When you finish this introduction, your students must be able to:



- Identify standards of conduct that apply to the acquisition process.
- Recognize prohibited activities
- Identify the penalties for prohibited conduct.

Time: 12:30 AM — 90 Minutes

Method: Lecture/Discussion and Roleplay

LESSON PLAN

Ref.	Steps In Presenting The Topic	Instructor Notes
10-1 to 10-4	10.1 Standards of Conduct a. State the public expects Government operations of all kinds to be open, honest, and fair-dealing. This is especially true in acquisition. <div>?</div> b. Question: “Who are the publics for the acquisition process and what are their respective concerns about integrity?” [Solicit answers from the class before providing your own] Answer: 1. The Public at Large: That their tax dollars are well spent (bearing in mind that the Government expends more than \$100 billion on its contracts every year). 2. Private sector businesses: That they are being treated fairly and impartially when they compete for Federal acquisition dollars.	

Ref.	Steps In Presenting The Topic	Instructor Notes
EO 11222	<p>c. Present the basic standard of conduct:</p> <p>Conduct Government business—except as authorized by the statutes or regulations—with complete impartiality and preferential treatment to none.</p> <p>Among other things, this means that you should:</p> <ul style="list-style-type: none"> • Avoid any conflict of interest. • Avoid the appearance of any conflict of interest. • Conduct yourself such that you would have no reluctance to a full public disclosure of your actions. <p>Note that the exception refers to tradeoffs with socio-economic goals (e.g., preference for small business; preference for American made products).</p>	
	<p>d. Question: “What actions could a Government official or employee take that would be considered unethical?” [Solicit answers from the class before providing your own]</p> <p>Among the answers:</p> <ul style="list-style-type: none"> • Use public office for private gain. • Give preferential treatment to any person. • Impede Government efficiency or economy. • Lose complete independence or impartiality. • Make a Government decision outside official channels. • Adversely affect public confidence in the integrity of the Government. • Disclose proprietary or source selection information to unauthorized sources. 	
	<p>e. Show VG 10-1: Standards of Conduct (CM 10-2).</p>	



STANDARDS OF CONDUCT

Apply to all Government personnel including:

- Contracting Personnel
- Technical and Engineering Personnel
- Financial Personnel
- Clerical, Support, and Administrative Personnel

Can you name any others?


VG 10-1

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>f. Question: “Can you name any others to whom the standards might apply?” [Solicit answers from the class before providing your own]</p> <p>Among the possible answers:</p> <ul style="list-style-type: none"> • Program/project managers • CORs, COTRs • Anyone else who determines requirements, evaluates proposals, or prepares specifications 	
	<p>g. Show VG 10-2 and 10-2a: Prohibited Conduct (Government). Inform the class that the overheads list types of conduct that are directly prohibited by the FAR and various provisions of title 18 of the United States Code.</p> <p>Continue showing these overheads as you discuss each bullet in turn.</p>	

PROHIBITED CONDUCT (GOVERNMENT)

- Taking bribes
- Representing Contractors
- Making or recommending official decisions in which you have a financial interest
- Conspiring to defraud the Government
- Making false statements and covering up unethical conduct
- Disclosing source selection or proprietary information
- Contracting with Government employees
- Contracting with Members of Congress

VG 10-2 and 10-2a


Ref.	Steps In Presenting The Topic	Instructor Notes
10-5	10.2.1 Bribes	
18 USC 201	<p>a. Define “bribe” and state the penalty.</p> <p>A gratuity, a gift, a favor, entertainment, a loan, or anything of monetary value, that is solicited and/or accepted from someone who:</p> <ul style="list-style-type: none"> • Has or is seeking Government business with your agency • Conducts activities that are regulated by your agency (e.g., FCC, FAA, EPA) • Has interests that may be substantially affected by your performance or nonperformance of your official duties. <p>Penalty: A fine of not more than 3 times the value of the bribe, or imprisonment of not more than 5 years, or both; a person may also be disqualified from holding office or a position of trust or profit with the United States.</p>	
	<p>b. Question: “What if you have lunch with the contractor. The contractor wants to pay by credit card. Should you let the contractor charge the full amount of the bill in return for reimbursement from you in cash for your share of the bill?” [Solicit answers from the class before providing your own]</p> <p>Answer: Not illegal—but note that the only written evidence of the transaction, which may be picked up later in an audit, is the contractor's credit card receipt!!!!</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
10-5 to 10-6 18 USC 205	<p data-bbox="391 296 873 331">10.2.2 Representing Contractors</p> <p data-bbox="391 369 886 401">a. State that there are restrictions on:</p> <ul data-bbox="415 415 1089 558" style="list-style-type: none"> <li data-bbox="415 415 1062 478">• Representing a contractor while employed by the Government. <li data-bbox="415 491 1089 558">• Representing a contractor after leaving the Government to take a position with that contractor. <p data-bbox="391 596 1097 669">b. Describe restrictions on representing a contractor while employed:</p> <p data-bbox="440 686 1084 856">As a Government employee, you may not act on behalf of a party in any matter, including a claim or contract, in which the U.S. has an interest. This prohibition extends to matters before any agency or tribunal.</p> <p data-bbox="391 896 1094 970">c. Describe restrictions on representing a contractor after leaving the Government:</p> <p data-bbox="440 987 1105 1052">You cannot take a position with a contractor and then represent that contractor:</p> <ul data-bbox="448 1066 1114 1241" style="list-style-type: none"> <li data-bbox="448 1066 1114 1131">• On any matter in which you had personally and substantially participated as a Government official <li data-bbox="448 1144 1114 1241">• On matters that were under your official responsibility during your last year of Federal service (within two years after leaving the Government) <p data-bbox="391 1281 1101 1388">d. Describe the penalty: A fine of not more than \$10,000, imprisonment of not more than 2 years, or both.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
10-6	10.2.3 Official Decisions in Which You Have a Financial Interest	
18 USC 208	<p>a. Describe the prohibition on making official decisions in which you have a financial interest.</p> <p>You may not participate personally and substantially in a particular matter in which any of the following have a financial interest:</p> <ul style="list-style-type: none"> • You • Your spouse • Your minor child • Your partner • An organization in which you are serving as officer, director, trustee, partner, or employee • A person or organization with whom you are negotiating for prospective employment <p>b. State that this prohibition may be waived by the appointing official if the financial interest is found to be not so substantial as to affect the integrity of your services.</p> <p>c. Describe the penalty: A fine of not more than \$10,000, or imprisonment of not more than 2 years, or both.</p>	
10-6 to 10-7 18 USC 286	<p>10.2.4 Conspiring to Defraud the Government</p> <p>a. Describe the prohibition on conspiracy.</p> <p>You may not enter into any agreement or conspiracy to defraud the U.S., or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim.</p> <p>b. Describe the penalty: A fine of not more than \$10,000, or imprisonment of not more than 10 years, or both.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
10-7 18 USC 1001	<p>10.2.5 False Statements and Cover-Ups</p> <p>a. Describe the prohibition on false statements and coverups.</p> <p style="padding-left: 40px;">You may not falsify, conceal or cover-up by any trick, scheme, or device, material fact, statements or representations or make or use any false writing or document knowing that it contains a false, fictitious or fraudulent statement or entry.</p> <p>b. Describe the penalty: A fine of not more than \$10,000, or imprisonment of not more than 5 years, or both.</p>	
10-7 to 10-9	<p>10.2.6 Disclosing Source Selection or Proprietary Information</p> <p>a. Describe the FAR restrictions on disclosing source selection or proprietary information.</p> <p style="padding-left: 40px;">The FAR forbids unauthorized disclosures of:</p> <ul style="list-style-type: none"> • A contractor's proprietary information • Government source selection information <p>[For definitions of “proprietary information” and “source selection information”, refer the class to FAR 3.104-4.]</p> <p>b. Describe the relationship between (1) FAR restrictions on disclosure and (2) phases of the acquisition process.</p> <p style="padding-left: 40px;">For each phase of the acquisition process, the FAR prescribes (1) who may release information, (2) when it may be released, and (3) how it may be released.</p> <p style="padding-left: 40px;">For example, you may not disclose the price of a bid prior to bid opening.</p> <p style="padding-left: 40px;">However, at the bid opening, all prices are publicly announced.</p> <p style="padding-left: 40px;">Refer the students to pages 10-8 through 10-10 for a phase by phase account of FAR restrictions on disclosure.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
	<p>c. State the general rule implicit in the FAR for disclosure:</p> <p style="padding-left: 40px;">Do not release information to any one offeror that would give that offeror an unfair competitive advantage over others.</p> <p>d. State that, in addition to FAR restrictions, §1905 of title 18, USC, prohibits disclosure of trade secrets and other proprietary data on an individual or firm.</p> <p>e. Describe the penalty: A fine of not more than \$1,000, imprisonment of not more than 1 year, or both, and removal from office or employment.</p>	
10-9	10.2.7 Contracting With Government Employees	
FAR 3.6	<p>a. Describe the prohibition on contracting with Government employees.</p> <p style="padding-left: 40px;">You may not knowingly award a contract to (1) a Government employee, or (2) a business concern or other organization that is owned or substantially owned or controlled by one or more Government employees.</p> <p style="padding-left: 40px;">An HCA may authorize an exception to this standard only if there is a compelling reason to do so.</p>	
10-9	10.2.8 Contracting With Members of Congress	
FAR 3.102	<p>a. Describe the prohibition on contracting with Government employees.</p> <p style="padding-left: 40px;">You may not award a contract when any member of Congress (or any delegate to Congress or resident commissioner) would have any share or part of the contract or realize any benefit from it.</p> <p>b. Point out Exhibit 10-4, a typical agency penalty guide (page 10-10).</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
10-11	<p data-bbox="391 296 1027 333">10.3 Standards of Conduct (Contractors)</p> <div data-bbox="284 369 367 449">  </div> <p data-bbox="391 369 1133 480">a. Show VG 10-3: Prohibited Conduct (Contractors). This viewgraph lists conduct that contractors may not engage in.</p> <p data-bbox="440 495 1068 562">Continue showing these overheads as you discuss each bullet in turn.</p>	

PROHIBITED CONDUCT (CONTRACTORS)

- Offers of Employment
- Collusive Pricing
- Contractor Gratuities to Government Personnel
- Anti-trust Violations
- Contingent Fees
- Subcontractor Kickbacks
- Unreasonable Restrictions on Subcontractor Sales


VG 10-3

	<p data-bbox="391 1176 1133 1287">b. Describe the steps that COs may take upon finding that a firm has violated one or more of these standards.</p> <ul style="list-style-type: none"> • Determine that the firm is nonresponsible for the instant procurement under the General Standard on integrity or eligibility • Recommend the firm for debarment or suspension to the debarring official • Void or rescind contracts in relation to which there has been: <ul style="list-style-type: none"> - A final conviction of bribery - A conflict of interest - Misconduct <p data-bbox="440 1696 1133 1766">Note that these actions by the CO are in addition to any criminal penalties imposed by statute.</p>	
--	---	--

Ref.	Steps In Presenting The Topic	Instructor Notes
10-11	<p>10.3.1 Offers of Employment</p> <p>a. Describe the prohibition on offering employment to COs.</p> <p>As a general rule, contractors may not offer employment to a Government employee, if the purpose of such an offer is to gain an unfair advantage or otherwise improperly benefit from the offer.</p>	
10-11	<p>10.3.2 Collusive Pricing</p> <p>a. Describe the prohibition on collusive pricing.</p> <p>Offerors must submit prices that are arrived at independently.</p> <p>Define "independently" as meaning "without consultation, communication, or agreement with any other offeror or competitor relating to: (1) prices, (2) intention to submit an offer, or (3) methods or factors used to calculate the prices offered.</p>	
10-12	<p>10.3.3 Contractor Gratuities to Government Personnel</p> <p>a. Describe the prohibition on offering gratuities.</p> <p>Neither the contractor, its agent, nor its representative may offer or give a gratuity to an officer, official, or employee of the Government for the purpose of obtaining a contract or favorable treatment under an existing contract.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
10-12	<p>10.3.4 Anti-Trust Violations</p> <p>a. Describe the prohibition on activities that eliminate competition or restrain trade.</p> <p>Contractors may not participate in activities that eliminate competition or restrain trade, such as:</p> <ul style="list-style-type: none"> • Collusive bidding • Rotated low bids • Collusive price estimating systems • Follow-the-leader pricing • Sharing of the business 	
10-12	<p>10.3.5 Contingent Fees</p> <p>a. Describe the prohibition on contingent fees.</p> <p>Other than to a bona fide employee or agency, offerors may not pay a contingent fee to a person that is contingent upon the success that person has in securing a Government contract for the offeror.</p> <p>This means no payment of a:</p> <ul style="list-style-type: none"> • Commission • Brokerage • Percentage 	
10-13	<p>10.3.6 Subcontractor Kickbacks</p> <p>a. Describe the prohibition on kickbacks.</p> <p>Contractors may not propose, and subcontractors may not pay, kickbacks for award of the subcontract.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Money • Fee • Commission • Gift • Gratuity • Thing of value • Other compensation 	

Ref.	Steps In Presenting The Topic	Instructor Notes
10-13	<p>10.3.7 Unreasonable Restrictions on Subcontractor Sales</p> <p>a. Describe the prohibition on restricting subcontractor sales.</p> <p>Prime contractors may not unreasonably preclude subcontractors from making direct sales to the Government on the kinds of supplies or services furnished to the prime contractor for use under its contracts with the Government.</p>	
10-14	<p>10.4 Procurement Integrity</p> <p>a. State that, in 41 U.S.C. 423, the Congress established additional prohibitions--and additional administrative, contractual, civil, and criminal penalties--with respect to:</p> <ul style="list-style-type: none"> • Discussions of future employment or business opportunities between Federal procurement officials and competing contractors. • Bribes and gratuities. • The unauthorized disclosure of source selection and proprietary information. <p>b. State that this section of law establishes additional postemployment restrictions on Government officers and employees who served as procurement officials prior to separation from the Government.</p> <p>c. Refer the class to section 3.104 of the FAR for the effective dates and implementation of statutory requirements for procurement integrity.</p>	

Ref.	Steps In Presenting The Topic	Instructor Notes
 CM 10-3 TO 10-4	<p>ROLEPLAY #1</p> <p>a. Choose 4 students to play the following roles:</p> <ol style="list-style-type: none"> 1. Narrator, Dan Ward -- a quality assurance inspector, 2. Liz Robey -- contract specialist, 3. Dave Smith -- sales manager, and 4. J.B. Stein -- plant manager. <p>b. Inform the class that the roleplay contains numerous errors of unethical conduct.</p> <p>c. As the parts are read, ask the class to follow along in their copy on pages CM 10-3 to 10-4 and mark every line that contains an example of unethical conduct. Ask the class to also identify the specific standard of conduct or prohibited activity at issue.</p>	

ROLEPLAY

1. Narrator: Dan Ward is a quality assurance inspector for the small engine acquisition division of the National Supply Agency. Dan is preparing to drive across town to visit Mighty-Mite Manufacturing (MMM) Company, one of the agency's major suppliers, to spot check quality control on some engines now in production.

As Dan is leaving his office, he sees Liz Robey, a new contract specialist at the agency. After she completes her training program, Liz will be working in the contract branch that buys engines.
2. Dan: Hi Liz. How are you getting along?
3. Liz: Pretty good thanks. I just can't wait to complete my training so that I can start handling some buys.
4. Dan: I can understand that. Say, I'm going to visit MMM now. You will be working with them soon so why not come along and get acquainted with the people there? You can also take a plant tour.
5. Liz: Great idea! I have some time today. I'll tell my supervisor. Meet you in the parking lot in 5 minutes.

Standards of Conduct

6. Narrator: Soon Dan and Liz arrive at MMM. Dan takes her into the front office to meet the plant manager, J.B. Stein and the sales manger, Dave Smith. After some small talk, the four go on a plant tour.
7. Dave: (to Dan) By the way Dan, I hear you might be changing the 2 horsepower engine specification. What's up?
8. Dan: (to Dave) There have been some recent developments in solid-state circuitry that may be useful.
9. Dave: In what way?
10. Dan: We believe the circuitry can be adapted for use in the alternators for small engines.
11. Dave: Interesting. Whose circuits look good?
12. Dan: White Electronics. We think they are ahead of all of the rest. In fact, we plan to purchase a few 2 horsepower engines using a specification that requires the White type of circuitry. Their breakthrough was to use a double-grounded resistor. Simple but effective.
13. Dave: When will you issue your solicitation?
14. Dan: I can't say for sure, but I believe about 3 months from now.
15. Liz: Say you guys, I have seen enough, I believe we've been walking for over an hour.
16. J.B. Right. Let's go back to my office. I'll have the cafeteria send up some coffee and pastries.
17. Liz, Let's Go!
Dan & Dave:
18. Narrator: After enjoying the coffee and pastries, Dan and Liz prepare to leave.
19. J.B. (to Dan) Stop by the receptionist's desk and have her stamp your parking ticket. No use in you paying those ridiculous commercial rates.
20. Dan: OK J.B., thanks.
21. Narrator: Dan and Liz are driving back to the agency.
22. Liz: That was a good experience for me. I really look forward to working with them. By the way, how did the inspection go?

23. Dan: I didn't do much inspecting because I know they are good producers. I stop by frequently though. It gives me a chance to relax and Dave and I enjoy our technical conversations with each other.
24. Liz: I know how you feel. J.B. is great too. In fact, I want to stay in close contact with him. He said that after I learn the ropes he might be able to offer me a good job on his administrative staff.
25. Dan: Yeah, he and Dave have talked to me about that too. But, I like where I am better. I get to take interesting trips and do a little wheeling and dealing with our contractors.

This is a gross exaggeration of a lack of integrity on the part of both Government and contractor's. Name all the standards of conduct violated in this roleplay. Reference the problems by the numbers next to each part of the script.

DISCUSSION POINTS FOR ROLEPLAY

Problems that occur during the roleplay:

The first problem occurs at item number 10. Here, Dan is giving advanced procurement information and preferential treatment that is prejudicial to other prospective contractors.

The second problem occurs at item number 12. Dan is giving away proprietary information when he tells of White Electronic's breakthrough in using double-grounded resistors.

The third problem occurs at item numbers 16 and 17. J.B.'s offer and Dan and Liz's acceptance of the coffee and pastries is considered a bribe.

The fourth problem occurs at item number 19. J.B.'s offer and Dan's acceptance of the gratuity (parking validation) is considered a bribe.

The fifth problem occurs at item number 23. The fact that Dan is not inspecting the contractor's work indicates that he and the contractor may be doing some dealing under the table.

The sixth problem occurs at item numbers 24 and 25. The contractor apparently has offered employment to the Government employees in the hopes of receiving favorable treatment on this contract or in acquiring other contracts in the future.